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Report of the Committee on the Rights of the Child

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Supplement No. 41 (A/61/41)

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Note

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 27 January 2006, the closing date of the forty-first session of the Committee on the Rights of the Child, there were 192 States parties to the Convention on the Rights of the Child. An updated list of States that have signed, ratified or acceded to the Convention can be consulted at www.ohchr.org or untreaty.un.org.

2. As at the same date, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict had been ratified or acceded to by 105 States parties and signed by 121 States. Also as at the same date, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography had been ratified or acceded to by 101 States parties and signed by 114 States. An updated list of States that have signed, ratified or acceded to the two Optional Protocols can be consulted at www.ohchr.org or untreaty.un.org.

B. Sessions of the Committee

3. The Committee has held six sessions since the adoption of its previous biennial report (A/59/41): thirty-sixth session (17 May-11 June 2004), thirty-seventh session (13 September-8 October 2004), thirty-eighth session (10-28 January 2005), thirty-ninth session (16 May-3 June 2005), fortieth session (12-30 September 2005), forty-first session (9-27 January 2006). Subsequent to each session, the Committee issues a report of the session containing the full text of all concluding observations adopted as well as any decisions and recommendations (including those arising from a day of general discussion) or general comments adopted. The reports on the aforementioned sessions are contained in documents CRC/C/140, CRC/C/143, CRC/C/146, CRC/C/150, CRC/C/153 and CRC/C/41/3, respectively.

C. Membership and officers of the Committee

4. From the thirty-sixth to the thirty-eighth sessions, the Committee maintained the same members and officers noted in its previous report to the General Assembly (A/59/41, paras. 4-7). On 23 February 2005, the Tenth Meeting of States parties was convened to elect new members to the Committee. Subsequently, the Committee elected a new set of officers to reflect its new membership.

5. In accordance with article 43 of the Convention, the Tenth Meeting of States parties to the Convention was convened on 23 February 2005 at United Nations Headquarters. The following nine members of the Committee were elected or re-elected for a term of four years beginning on 28 February 2005: Ms. Ghalia Mohd Bin Hamad Al-Thani, Ms. Joyce Aluoch, Ms. Yanghee Lee, Mr. David Brent Parfitt, Mr. Awich Pollar, Mr. Kamal Siddiqui, Ms. Lucy Smith, Ms. Nevena Vuckovic-Sahovic, and Mr. Jean Zermatten. The list of the members of the Committee, with an indication of their term of office, appears in annex I to the present report. Annex I also indicates the officers elected during the Committee's thirty-ninth session (see also the report of the thirty-ninth session, CRC/C/150).

D. Adoption of the report

6. At its 1120th meeting, held on 27 January 2006, the Committee considered the draft of its eighth biennial report to the General Assembly, covering its activities from the thirty-sixth to forty-first sessions. The report was adopted unanimously by the Committee.

II. DECISIONS AND RECOMMENDATIONS ADOPTED BY THE COMMITTEE ON THE RIGHTS OF THE CHILD AT ITS THIRTY-SIXTH TO FORTY-FIRST SESSIONS

7. During the reporting period, the Committee adopted two decisions at its thirty-seventh and thirty-ninth sessions respectively.

8. The first decision, adopted at its thirty-seventh session (13 September-8 October 2004), was related to the rights of children without parental care and recommended that the Commission on Human Rights consider the establishment of a working group to develop guidelines for the protection and alternative care of children without parental care during its sixty-first session. The full text of the Committee's decision is contained in its report of the thirty-seventh session (CRC/C/143).

9. The second decision was adopted by the Committee at its thirty-ninth session (16 May-3 June 2005) and outlined the methods by which the Committee will consider the initial reports of States parties under the two Optional Protocols to the Convention, on the involvement of children in armed conflict and on the sale of children, child pornography and child prostitution. The full text of the decision can be found in the Committee's report on its thirty-ninth session (CRC/C/150).

III. REPORTS BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

A. Submission of reports

10. In order to maintain an up-to-date register of status of submission of reports and adoption of related concluding observations, prior to each session the Committee issues a comprehensive document outlining the number of reports submitted to date. This document, entitled Submission of Reports by States parties, also contains relevant information on the exceptional measures taken to address late or non-reporting. The latest version of this report was issued prior to the Committee's forty-first session on 30 November 2005 in document CRC/C/41/2.

11. As of 30 November 2005, the Committee had received 301 reports pursuant to article 44 of the Convention, including 186 initial, 99 second periodic and 16 third periodic reports as well as 16 initial State party reports under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and 11 initial reports under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. For the full list of these reports please see CRC/C/41/2 annexes I, II and II respectively.

12. During the period under consideration, the Committee received from a number of States parties (Algeria, Kazakhstan, Norway, Switzerland) additional information submitted in accordance with the recommendations made by the Committee in its concluding observations. It also received communications transmitting information and views of States parties with respect to the observations made by the Committee requesting the Committee to include this information in the Report to the General Assembly (People's Republic of China, included in annex IV).

B. Consideration of reports

13. During its thirty-sixth to forty-first sessions, the Committee considered 54 initial and periodic reports under the Convention, 6 initial reports under the Optional Protocol on the involvement of children in armed conflict and 5 initial reports under the Optional Protocol on the sale of children, child prostitution and child pornography.

14. The following table indicates, by session, the States parties' reports considered by the Committee during the period covered by the present report. It further provides the document symbol of the session report in which the concluding observations of the Committee have been published, the symbols of States parties' reports considered by the Committee and the document symbol of the concluding observations published separately as a single document.

	State party report	Concluding observations
Thirty-sixth session, 17 May-4 June 2004 (session report symbol CRC/C/140)		
El Salvador, second	CRC/C/65/Add.25	CRC/C/15/Add.232
Panama, second	CRC/C/70/Add.20	CRC/C/15/Add.233
Rwanda, second	CRC/C/70/Add.22	CRC/C/15/Add.234
Sao Tome and Principe	CRC/C/8/Add.49	CRC/C/15/Add.235
Liberia	CRC/C/28/Add.21	CRC/C/15/Add.236
Myanmar, second	CRC/C/70/Add.21	CRC/C/15/Add.237
Dominica	CRC/C/8/Add.48	CRC/C/15/Add.238
Democratic Peoples Republic of Korea, second	CRC/C/65/Add.24	CRC/C/15/Add.239
France, second	CRC/C/65/Add.26	CRC/C/15/Add.240
Thirty-seventh session, 13 September-1 October 2004 (session report symbol CRC/C/143)		
Brazil	CRC/C/3/Add.65	CRC/C/15/Add.241
Botswana	CRC/C/51/Add.9	CRC/C/15/Add.242
Croatia, second	CRC/C/70/Add.23	CRC/C/15/Add.243
Kyrgyzstan, second	CRC/C/104/Add.4	CRC/C/15/Add.244
Equatorial Guinea	CRC/C/11/Add.26	CRC/C/15/Add.245
Angola	CRC/C/3/Add.66	CRC/C/15/Add.246
Antigua and Barbuda	CRC/C/28/Add.22	CRC/C/15/Add.247

	State party report	Concluding observations
Thirty-eighth session, 10-28 January 2005 (session report symbol CRC/C/146)		
Sweden, third	CRC/C/125/Add.1	CRC/C/15/Add.248
Albania	CRC/C/11/Add.27	CRC/C/15/Add.249
Luxembourg, second	CRC/C/104/Add.5	CRC/C/15/Add.250
Austria, second	CRC/C/83/Add.8	CRC/C/15/Add.251
	CRC/C/OPAC/AUT/1	CRC/C/OPAC/CO/2
Belize, second	CRC/C/65/Add.29	CRC/C/15/Add.252
Bahamas	CRC/C/8/Add.50	CRC/C/15/Add.253
Iran (Islamic Republic of), second	CRC/C/104/Add.3	CRC/C/15/Add.254
Togo, second	CRC/C/65/Add.27	CRC/C/15/Add.255
Bolivia, third	CRC/C/125/Add.2	CRC/C/15/Add.256
Nigeria, second	CRC/C/70/Add.24	CRC/C/15/Add.257
Thirty-ninth session, 16 May-3 June 2005 (session report symbol CRC/C/150)		
Saint Lucia	CRC/C/28/Add.23	CRC/C/15/Add.258
Philippines, second	CRC/C/65/Add.31	CRC/C/15/Add.259
Bosnia and Herzegovina	CRC/C/11/Add.28	CRC/C/15/Add.260
Nepal, second	CRC/C/65/Add.30	CRC/C/15/Add.261
Ecuador, second and third	CRC/C/65/Add.28	CRC/C/15/Add.262
Norway, third	CRC/C/129/Add.1	CRC/C/15/Add.263
	CRC/C/OPSA/NOR/1	CRC/C/OPSA/CO/1
Mongolia, second	CRC/C/65/Add.32	CRC/C/15/Add.264
Nicaragua, third	CRC/C/125/Add.3	CRC/C/15/Add.265
Costa Rica, third	CRC/C/125/Add.4	CRC/C/15/Add.266
Yemen, third	CRC/C/129/Add.2	CRC/C/15/Add.267
Fortieth session, 12-30 September 2005 (session report symbol CRC/C/153)		
Australia, second and third	CRC/C/129/Add.4	CRC/C/15/Add.268
Algeria, second	CRC/C/93/Add.7	CRC/C/15/Add.269
Uganda, second	CRC/C/65/Add.33	CRC/C/UGA/CO/2
China, second	CRC/C/83/Add.9 and (I-II)	CRC/C/CHN/CO/2
	CRC/C/OPSA/CHN/1	CRC/C/OPSC/CHN/CO/1
Finland, third	CRC/C/129/Add.5	CRC/C/15/Add.272
	CRC/C/OPAC/FIN/1	CRC/C/OPAC/FIN/CO/1
Denmark, third	CRC/C/129/Add.3	CRC/C/15/Add.273
	CRC/C/OPAC/DNK/1	CRC/C/OPAC/DNK/CO/1
Russian Federation, third	CRC/C/125/Add.5	CRC/C/RUS/CO/3

	State party report	Concluding observations
Forty-first session, 9-27 January 2006 (session report symbol CRC/C/41/3)		
Azerbaijan, second	CRC/C/83/Add.13	CRC/C/AZE/CO/2
Ghana, second	CRC/C/65/Add.34	CRC/C/GHA/CO/2
Hungary, second	CRC/C/70/Add.25	CRC/C/HUN/CO/2
Liechtenstein, second	CRC/C/136/Add.2	CRC/C/LIE/CO/2
Lithuania, second	CRC/C/83/Add.14	CRC/C/LTU/CO/2
Mauritius, second	CRC/C/65/Add.35	CRC/C/MUS/CO/2
Peru, third	CRC/C/125/Add.6	CRC/C/PER/CO/3
Saudi Arabia, second	CRC/C/136/Add.1	CRC/C/SAU/CO/2
Thailand, second	CRC/C/83/Add.15	CRC/C/THA/CO/2
Trinidad and Tobago, second	CRC/C/83/Add.12	CRC/C/TTO/CO/2
Andorra	CRC/C/OPSA/AND/1	CRC/C/OPSC/AND/CO/1
	CRC/C/OPAC/AND/1	CRC/C/OPAC/AND/CO/1
Bangladesh	CRC/C/OPAC/BGD/1	CRC/C/OPAC/BGD/CO/1
Kazakhstan	CRC/C/OPSA/KAZ/1	CRC/C/OPSC/KAZ/CO/1
Morocco	CRC/C/OPSA/MAR/1	CRC/C/OPSC/MAR/CO/1
Switzerland	CRC/C/OPAC/CHE/1	CRC/C/OPAC/CHE/CO/1

C. Progress achieved: trends and challenges of the implementation process with respect to children affected by armed conflict

15. To assess achievements and challenges, as well as current trends in child rights, the Committee has decided to highlight a particular trend or challenge related to the implementation of child rights which it has encountered through its monitoring activities. In this report, the Committee has decided to reflect on the involvement of children in armed conflict.

16. The international community has taken an increasing interest in the rights of children involved in or affected by armed conflict. One particular milestone was the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 12 February 2002. During the period covered by the report, the Committee began to receive and consider initial reports under the Optional Protocol. At the end of its forty-first session the Committee had considered 7 of the 17 reports submitted under the Optional Protocol since its entry into force. From its thirty-sixth to forty-first sessions, the Committee has also raised the issue of children in armed conflict during the consideration of 13 State party reports under the Convention.

17. At the same time, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict has been doing important work in raising awareness about the victimization of children in armed conflict, and advocating on their behalf. The first Special Representative, Mr. Olara Otunnu, appointed in 1997 when the office was established, created a profile for the office which has allowed it to work effectively both at the international and national level. The Committee notes with particular appreciation the increased attention being paid to children in armed conflict by the Security Council, in large part thanks to the work of Mr. Otunnu, whose term expired in 2005.

18. These developments indicate that the mechanisms aimed at protecting the rights of children in armed conflict have become increasingly comprehensive and proactive. Yet at the same time, violations of the rights of the child during armed conflict continue to occur. In addition to the increased attention paid by the Committee, the Secretary-General of the United Nations launched the "era of application" campaign for the enforcement of international norms and standards for the protection of the rights of children involved in armed conflict in his 2005 report to the Security Council and the General Assembly on children and armed conflict (A/59/695-S/2005/72). The campaign has resulted in a Security Council resolution establishing, among other things, a monitoring and reporting mechanism on grave violations against children in situations of conflict as well as a commitment to implement targeted measures against those parties to conflict that commit such grave violations (Security Council resolution 1612 of 26 July 2005).

19. For all these reasons, the Committee on the Rights of the Child is of the opinion that it is particularly timely to review its own experience, while highlighting the complementarities between the various international mechanisms for monitoring and reporting on rights of children affected by armed conflict. Rather than viewing these mechanisms as duplicative, the Committee is of the opinion that there is great potential for positive reinforcement and enhanced cooperation with the United Nations system.

20. Since the entry into force of the Optional Protocol on the involvement of children in armed conflict, the Committee has considered the initial reports under the Protocol of Andorra (CRC/C/OPAC/AND/1), Austria (CRC/C/OPAC/AUT/1), Bangladesh (CRC/C/OPAC/BGD/1), Denmark (CRC/C/OPAC/DNK/1), Finland (CRC/C/OPAC/FIN/1), New Zealand (CRC/C/OPAC/NZL/1) and Switzerland (CRC/C/OPAC/CHE/1). These countries have not recently experienced or been involved in armed conflict directly themselves, yet the fulfilment of their reporting obligations under the Optional Protocol illustrates clearly that the protection afforded to children under the Optional Protocol is ongoing and does not merely become relevant if and when a State party is experiencing the effects of armed conflict.

21. Accordingly, the Committee's discussions with States parties to the Optional Protocol have focused primarily on ensuring that any recruitment of under-18s into the armed forces is genuinely voluntary. Another key issue raised by the Committee is the international cooperation and assistance for children affected by armed conflict provided by the reporting States parties to States experiencing armed conflict. While appreciative of the assistance provided with respect to prevention, the Committee is also trying to encourage more assistance and cooperation for demobilization and reintegration of former child combatants.

22. In addition to monitoring the implementation of the Protocol, the Committee is also actively encouraging States parties to further strengthen the protection of children from forced recruitment and involvement in armed conflict. The Committee regularly suggests to States parties to criminalize such activities within their territories and to consider assuming extraterritorial jurisdiction when either the victim or perpetrator is a national of the State party.

23. An emerging issue which has arisen from these discussions is the question of whether the obligations for States parties under article 6 (1) to "take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction" requires the application of universal jurisdiction. The Committee continues to elaborate its own position on this issue.

24. In addition to its consideration of initial reports under the Optional Protocol on the involvement of children in armed conflict, since the thirty-sixth session, the Committee has made recommendations related to children affected by armed conflict to 13 States parties: Algeria (CRC/C/15/Add.269), Angola (CRC/C/15/Add.246), Bosnia and Herzegovina (CRC/C/15/Add.260), Croatia (CRC/C/15/Add.243), Liberia (CRC/C/15/Add.236), Myanmar (CRC/C/15/Add.237), Nepal (CRC/C/15/Add.261), Nigeria (CRC/C/15/Add.257), Philippines (CRC/C/15/Add.259), Russian Federation (CRC/C/RUS/CO/3), Rwanda (CRC/C/15/Add.234), Thailand (CRC/C/THA/CO/2) and Uganda (CRC/C/UGA/CO/2). When one compares the situation of children affected by armed conflict in these States parties with those considered under the Optional Protocol, it is clear that the Convention on the Rights of the Child, in particular article 38, continues to be of significance.

25. In its recommendations made to these 13 States parties, the Committee focused on strengthening measures aimed at preventing the recruitment of children into armed forces and expanding efforts at their demobilization and reintegration, in cases where armed groups continue to be active or where demobilization has not yet been completed. It has also made recommendations related to the protection of children from landmines. Of particular concern to the Committee in all these cases has been the protection and assistance provided to children as victims of violence or all forms of deprivation as a result of armed conflict. Accordingly, in all cases the Committee made comprehensive recommendations to those States parties to strengthen programmes and policies aimed at promoting the physical and psychological recovery and social integration of victims in an environment which fosters the health, self-respect and dignity of the child, in accordance with article 39 of the Convention.

26. In this regard, the work of the Committee has illustrated significant complementarities with the new monitoring and reporting mechanism established by the Security Council in resolution 1612. Although the mechanism is still being elaborated, it will focus on six grave child rights violations in situations of conflict: the killing or maiming of children, recruiting or using child soldiers; attacks against schools or hospitals; rape and other grave sexual violence against children; abduction of children; and denial of humanitarian access for children. The Committee hopes that this mechanism will increase accountability for these violations. From its perspective, the Committee will continue to promote the importance of protecting the rights of victims, in addition to ensuring accountability.

27. There are two potential scenarios in which the mechanisms can support each other in States where the SC1612 monitoring mechanism is present at national level. First in cases, where the Committee on the Rights of the Child has recently adopted concluding observations related to children affected by armed conflict either under the Convention or its Optional Protocol; and second, where the State in question has ratified but not fulfilled its reporting obligations under the Convention or the Optional Protocol.

28. With respect to the first scenario, the Committee suggests that SC1612 monitoring mechanism pay particular attention to its concerns raised in the concluding observations and assess the extent to which the State party has begun to effectively implement the Committee's recommendations. The concluding observations can help the SC1612 mechanism to more effectively target particular issues, groups of children or geographical areas, for instance, and recall that programmes aimed at victim protection are not prioritized over accountability concerns.

29. In cases where there are no concluding observations because of the absence of a report required under the Convention on the Rights of the Child or its Optional Protocol on the involvement of children in armed conflict, the Committee hopes that the work of the monitoring mechanism can facilitate the fulfilment of those reporting obligations. As the Committee is well aware, the establishment of effective monitoring and reporting mechanisms and processes at national level is not easy, in particular for countries in armed conflict. Experience has shown that technical assistance provided, for example by the Office of the United Nations High Commissioner for Human Rights (OHCHR) or the United Nations Children's Fund (UNICEF), is often an important tool for States parties to fulfil their human rights reporting obligations. Accordingly, the Committee hopes that the monitoring and reporting capacity built at national level through the SC1612 mechanism will feed into processes for the reporting required under the Convention on the Rights of the Child and its Optional Protocol. While fulfilling its reporting requirements under SC1612, the monitoring mechanism can also serve as a reminder and catalyst for States parties to fulfil its human rights reporting obligations. Furthermore, the monitoring and reporting required by the Convention on the Rights of the Child (CRC) and its Optional Protocols provide an ideal opportunity to ensure sustainability and continuity for national level structures and processes developed by the SC1612 monitoring and reporting mechanism long after the relevant conflict situation is no longer on the agenda of the Security Council.

30. The Committee looks forward to enhanced cooperation with the United Nations system, including the Office of the Special Representative of the Secretary-General on children affected by armed conflict. Past cooperation has proven fruitful and the Committee is pleased to see that the rights of children affected by armed conflict are taking on such a prominent place in the agenda of the international community. It is committed to supporting and facilitating the work of the SC1612 monitoring and reporting mechanism, as well as the newly established Security Council Working Group.

IV. OVERVIEW OF THE OTHER ACTIVITIES OF THE COMMITTEE

A. Methods of work

1. Recommendation to work with a two-chamber system

31. Taking account of the increase in membership of the Committee from 10 to 18 and the fact the amendment to the Convention on this matter sought to increase the capacity of the Committee to deal with its growing workload, and after discussing various options during its thirty-fourth session, the Committee adopted a recommendation that, for an initial period of two years, reports submitted by States parties be reviewed by two parallel chambers of the Committee. On 24 February 2005, the General Assembly adopted a resolution (A/RES/59/261) authorizing the Committee to meet in two chambers as a temporary and exceptional measure to clear the significant backlog of reports facing the Committee on the Rights of the Child. There was a backlog of 58 reports at the time that the General Assembly approved the request.

32. The Committee agreed that it would meet in two separate chambers for the dialogue with States parties and that concluding observations would be discussed and adopted in plenary

by the whole Committee. This would allow the Committee to increase the average number of State party reports from 9 to 16 per session. The forty-first session was the first session in which the Committee met in two chambers (this also includes the forty-first pre-sessional working group held in October 2005). Sixteen State party reports under the Convention and its two Optional Protocols were considered during that session.

33. The composition of the two chambers and the allocation of State party reports to the chambers were determined by lottery. The composition of the two chambers will remain the same for the forty-second session, at which point the Committee will review the composition and decide whether the composition needs to be revised for the forty-third session.

2. Informal consultations with States parties

34. On 23 January 2004, the Committee held a second informal consultation with States parties to the Convention on the Rights of the Child and its two Optional Protocols (936th meeting). Representatives of over 60 States parties took part in an interactive dialogue with the Committee. Four main issues were discussed: the revision of the Committee's guidelines for periodic reporting, the Committee's proposed two chambers working method; working methods for the consideration of initial reports under the two Optional Protocols to the Convention; and the United Nations study on violence against children. (For a full record of the meeting please see CRC/C/SR. 936.)

35. On 17 January 2006, at its forty-first session, the Committee held a third informal meeting with States parties to the Convention (1098th meeting), which was attended by representatives of 53 States parties to the Convention and/or its Optional Protocols. Representatives of UNICEF, the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organizations (NGOs) also attended the meeting. The issues discussed included: (1) The Committee's initial experience operating in two chambers; (2) Reform of the treaty body monitoring and reporting system; and, (3) Follow-up to the Committee's concluding observations. (For a full record of the meeting, please see CRC/C/SR.1098.)

3. General comments

36. During the period under review, the Committee adopted the following two general comments:

- General comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6), which was adopted during the Committee's thirty-ninth session (see annex II); and

- General comment No. 7 on implementing child rights in early childhood (CRC/GC/2005/7), adopted during its fortieth session (see annex III).

37. As is its practice, the Committee involved other relevant United Nations human rights treaty bodies and mechanisms, United Nations agencies and bodies, NGOs and individual experts in the process of drafting these general comments.

4. Induction meeting

38. On 12 and 13 May 2005, OHCHR organized a two-day informal induction meeting to give the 10 newly elected members a chance to familiarize themselves with the working methods and procedures of the Committee. Other members of the Committee also participated in the meeting.

B. International cooperation and solidarity for the implementation of the Convention

1. Cooperation with United Nations and other competent bodies

39. During the period covered by the present report, the Committee pursued its cooperation with United Nations bodies, specialized agencies and other competent bodies.

40. The Committee held meetings with the following United Nations agencies and bodies and other competent bodies (the documents referred to in parentheses contain additional information on these meetings):

United Nations bodies and agencies

UNICEF (CRC/C/140, para. 643; CRC/C/150, para. 842 and CRC/C/41/3)

International Labour Organization (ILO) (CRC/C/140, para. 643 and CRC/C/150, para. 842)

UNHCR (CRC/C/146, para. 751 and CRC/C/150, para. 842)

UNICEF Innocenti Research Center (CRC/C/41/3)

Others

Representatives of the Inter-American Child Institute (IIN) and the Save the Children Regional Office for Latin America (CRC/C/140, para. 643)

Members of the International Law Commission (CRC/C/140, para. 643)

Child Helpline International (CRC/C/140, para. 643)

Consultant, Ms. Katrien Beeckman (CRC/C/143, para. 527)

Coordinating Committee of the NGO Group for the Convention on the Rights of the Child (CRC/C/140, para. 643)

NGO Group for the CRC, Sub-Group on Child Labour (CRC/C/140, para. 643)

Save the Children International Alliance (CRC/C/140, para. 643)

Canadian Standing Committee on Human Rights (CRC/C/146, para. 751)

NGO Group for the Convention on the Rights of the Child (CRC/C/150, para. 842)

Consultant, Gerison Lansdown (CRC/C/150, para. 842)

Federación Iberoamericana del Ombudsman (CRC/C/153, para. 527)

The Bernard Van Leer Foundation (CRC/C/153, para. 527)

Global Initiative to End All Corporal Punishment of Children (CRC/C/153, para. 527, CRC/C/41/3)

41. The Committee also held meetings with experts from the following other United Nations human rights mechanisms:

The Special Rapporteur on the Right to Education (CRC/C/140, para. 643)

Independent expert leading the Secretary-General's Study on Violence against Children, Mr. Paulo Sergio Pinheiro (CRC/C/140, para. 643)

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak (CRC/C/146, para. 751)

The Special Rapporteur of the Commission on Human Rights on the promotion and protection of human rights while countering terrorism, Mr. Martin Scheinin (CRC/C/153, para. 527).

42. The Chairperson of the Committee participated in the sixteenth and seventeenth meetings of persons chairing the human rights treaty bodies. Three members of the Committee also participated in the third and fourth inter-committee meetings (held in June 2004 and 2005).

2. Participation in United Nations and other relevant meetings

43. Committee members participated in a variety of meetings at the international, regional and national levels where issues relevant to the rights of the child were raised.

3. Other related activities

44. OHCHR, with the support of UNICEF, organized the Sub-Regional Workshop on the Implementation of the Concluding Observations of the Committee on the Rights of the Child, from 11 to 13 November 2004 in Bangkok, Thailand. The Workshop was hosted by the Government of the Kingdom of Thailand and attended by participants from Cambodia, Indonesia, Lao People's Democratic Republic, Thailand and Viet Nam as well as by representatives of United Nations entities and by four members of the Committee, Ms. Saisuree Chutikul, Mr. Jakob Egbert Doek, Ms. Yanghee Lee and Ms. Nevena Vuckovic-Sahovic. The event was addressed to government officials of the five States parties, representatives of the civil society including national experts, parliamentarians as well as to representatives of the national human rights institutions.

45. OHCHR, with the support of UNICEF, organized a Sub-Regional Workshop on the Implementation of the Concluding Observations of the Committee on the Rights of the Child, from 19 to 21 June 2005 in Doha, Qatar. The Workshop was hosted by the Supreme Council for Family Affairs of Qatar and attended by participants from Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen. Representatives of United Nations entities as

well as three members of the Committee, Ms. Moushira Khattab, Ms. Ghalia Mohammad Bin Hamad Al-Thani, Mr. Hatem Kotrane and previous Committee members participated as resource persons. The event was addressed to government officials of the seven States parties and representatives of the civil society, including national experts.

46. OHCHR and Plan International, with the support of the Government of Argentina, UNICEF, the World Health Organization (WHO/PAHO) and the Committee on the Rights of the Child, organized a subregional seminar on the Implementation of the Concluding Observations of the CRC, from 28 to 30 November 2005 in Buenos Aires, Argentina. The seminar, brought together over 150 people, was directed at government officials, members of parliament, representatives of national human rights institutions and of the civil society, as well as to journalists from 10 countries of the South American region, namely Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela. In addition to three members of the Committee on the Rights of the Child, Mr. Jaap Doek, Mr. Norberto Liwski and Ms. Rosa Maria Ortiz, representatives of United Nations entities, United Nations experts, special rapporteurs of the Commission on Human Rights and the independent expert leading the study of the Secretary-General on Violence against Children also participated.

47. Committee members' have actively contributed on activities related to the Secretary-General's Study on violence against children which was initiated through its recommendation to the General Assembly (A/56/488, annex). Former and current Committee members have participated in the regional consultations and other meetings relating to the Study and the Chairperson of the Committee serves on the Study's editorial board. The Committee has also in a coherent way brought out the global issue on violence against children in its review of the reports of the States parties to the Convention. In this respect, the Committee notes with appreciation an analysis of its concluding observations initiated by the independent expert, Mr. Paulo Sérgio Pinheiro. The Committee is confident that the Study's outcome will provide the States parties with concrete tools to take action, in partnership with civil society, to ensure the protection of every child from all forms of violence.

C. General thematic discussions

48. In accordance with rule 75 of its rules of procedure, the Committee holds an annual day of general discussion on the first Friday of its September session. On 17 September 2004, during the Committee's thirty-seventh session, this thematic discussion was devoted to the implementation of child rights in early childhood. The discussion was well attended by representatives of States parties, United Nations agencies, funds and programmes, NGOs and academic institutions. A summary of the discussions, the list of participants as well as the set of related recommendations adopted by the Committee can be found in its report of the thirty-seventh session (CRC/C/143). The Committee has also continued to follow this thematic issue closely and adopted a related general comment (see paragraph 36 above).

49 On 16 September 2005, during the Committee's fortieth session its discussion day was devoted to the issue of "Children without parental care". Over 200 representatives of States parties, United Nations partners and NGOs attended the discussion. A summary of the discussions and the recommendations adopted by the Committee are contained in its report of the fortieth session (CRC/C/153). Several Committee members have continued to follow up on this issue in cooperation with UNICEF and relevant NGOs in process aimed at elaborating international guidelines on children without parental care.

Annex I

MEMBERSHIP OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

Name of member	Country of nationality
Ms. Ghalia Mohd Bin Hamad AL-THANI**	Qatar
Ms. Joyce ALUOCH**	Kenya
Ms. Alison ANDERSON*	Jamaica
Mr. Jakob Egbert DOEK*	Netherlands
Mr. Kamel FILALI*	Algeria
Ms. Moushira KHATTAB*	Egypt
Mr. Hatem KOTRANE*	Tunisia
Mr. Lothar Friedrich KRAPPMANN*	Germany
Ms. Yanghee LEE**	Republic of Korea
Mr. Norberto LIWSKI*	Argentina
Ms. Rosa Maria ORTIZ*	Paraguay
Ms. Awa N'Deye OUEDRAOGO*	Burkina Faso
Mr. David Brent PARFITT**	Canada
Mr. Awich POLLAR**	Uganda
Mr. Kamal SIDDIQUI**	Bangladesh
Ms. Lucy SMITH**	Norway
Ms. Nevena VUCKOVIC-SAHOVIC**	Serbia and Montenegro
Mr. Jean ZERMATTEN**	Switzerland

* Term expires on 28 February 2007.

** Term expires on 28 February 2009.

Bureau of the Committee on the Rights of the Child 2005-2007

Chairperson: (and Chairperson of Chamber A)	M. Doek
Vice-Chair:	Ms. Lee
Vice-Chair:	Mr. Liwski
Vice-Chair: (and Chairperson of Chamber B)	Ms. Khattab
Vice-Chair:	Ms. Aluoch
Rapporteur:	Ms. Vuckovic-Sahovic

Annex II

GENERAL COMMENT No. 6 (2005)

Treatment of unaccompanied and separated children outside their country of origin

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I. OBJECTIVES OF THE GENERAL COMMENT

1. The objective of this general comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child (the "Convention"), with particular reference to the principles of non-discrimination, the best interests of the child and the right of the child to express his or her views freely.

2. The issuing of this general comment is motivated by the Committee's observation of an increasing number of children in such situations. There are varied and numerous reasons for a child being unaccompanied or separated, including: persecution of the child or the parents; international conflict and civil war; trafficking in various contexts and forms, including sale by parents; and the search for better economic opportunities.

3. The issuing of the general comment is further motivated by the Committee's identification of a number of protection gaps in the treatment of such children, including the following: unaccompanied and separated children face greater risks of, inter alia, sexual exploitation and abuse, military recruitment, child labour (including for their foster families) and detention. They are often discriminated against and denied access to food, shelter, housing, health services and education. Unaccompanied and separated girls are at particular risk of gender-based violence, including domestic violence. In some situations, such children have no access to proper and appropriate identification, registration, age assessment, documentation, family tracing, guardianship systems or legal advice. In many countries, unaccompanied and separated children are routinely denied entry to or detained by border or immigration officials. In other cases they are admitted but are denied access to asylum procedures or their asylum claims are not handled in an age- and gender-sensitive manner. Some countries prohibit separated children who are recognized as refugees from applying for family reunification; others permit reunification but impose conditions so restrictive as to make it virtually impossible to achieve. Many such children are granted only temporary status, which ends when they turn 18, and there are few effective return programmes.

4. Concerns such as these have led the Committee to frequently raise issues related to unaccompanied and separated children in its concluding observations. This general comment will compile and consolidate standards developed, inter alia, through the Committee's monitoring efforts and shall thereby provide clear guidance to States on the obligations deriving from the Convention with regard to this particular vulnerable group of children. In applying these standards, States parties must be cognizant of their evolutionary character and therefore recognize that their obligations may develop beyond the standards articulated herein. These standards shall in no way impair further-reaching rights and benefits offered to unaccompanied and separated children under regional human rights instruments or national systems, international and regional refugee law or international humanitarian law.

II. STRUCTURE AND SCOPE OF THE GENERAL COMMENT

5. This general comment applies to unaccompanied and separated children who find themselves outside their country of nationality (consistent with article 7) or, if stateless, outside their country of habitual residence. The general comment applies to all such children

irrespective of their residence status and reasons for being abroad, and whether they are unaccompanied or separated. However, it does not apply to children who have not crossed an international border, even though the Committee acknowledges the many similar challenges related to internally displaced unaccompanied and separated children, recognizes that much of the guidance offered below is also valuable in relation to such children, and strongly encourages States to adopt relevant aspects of this general comment in relation to the protection, care and treatment of unaccompanied and separated children who are displaced within their own country.

6. While the mandate of the Committee is confined to its supervisory function in relation to the Convention, its interpretation efforts must be conducted in the context of the entirety of applicable international human rights norms and, therefore, the general comment adopts a holistic approach to the question of the proper treatment of unaccompanied and separated children. This acknowledges that all human rights, including those contained in the Convention, are indivisible and interdependent. The importance of other international human rights instruments to the protection of the child is also recognized in the preamble to the Convention.

III. DEFINITIONS

7. "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.

8. "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.

9. A "child as defined in article 1 of the Convention", means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". This means that any instruments governing children in the territory of the State cannot define a child in any way that deviates from the norms determining the age of majority in that State.

10. If not otherwise specified, the guidelines below apply equally to both unaccompanied and separated children.

11. "Country of origin" is the country of nationality or, in the case of a stateless child, the country of habitual residence.

IV. APPLICABLE PRINCIPLES

(a) Legal obligations of States parties for all unaccompanied or separated children in their territory and measures for their implementation

12. State obligations under the Convention apply to each child within the State's territory and to all children subject to its jurisdiction (art. 2). These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State's territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with

respect to those children who come under the State's jurisdiction while attempting to enter the country's territory. Therefore, the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness.

13. Obligations deriving from the Convention vis-à-vis unaccompanied and separated children apply to all branches of government (executive, legislative and judicial). They include the obligation to establish national legislation; administrative structures; and the necessary research, information, data compilation and comprehensive training activities to support such measures. Such legal obligations are both negative and positive in nature, requiring States not only to refrain from measures infringing on such children's rights, but also to take measures to ensure the enjoyment of these rights without discrimination. Such responsibilities are not only limited to the provision of protection and assistance to children who are already unaccompanied or separated, but include measures to prevent separation (including the implementation of safeguards in case of evacuation). The positive aspect of these protection obligations also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and if in the child's best interest, to reunify separated and unaccompanied children with their families as soon as possible.

14. As reaffirmed in its general comment No. 5 (2003) (paras. 18-23), States parties to the Convention have to ensure that the provisions and principles of the treaty are fully reflected and given legal effect in relevant domestic legislation. In case of any conflict in legislation, predominance should always be given to the Convention, in the light of article 27 of the Vienna Convention on the Law of Treaties.

15. In order to ensure a conducive legal environment and in the light of article 41 (b) of the Convention, States parties are also encouraged to ratify other international instruments that address issues relating to unaccompanied and separated children, including the two Optional Protocols to the Convention on the Rights of the Child (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees ("the 1951 Refugee Convention") and the Protocol relating to the Status of Refugees, the Convention on the Reduction of Statelessness, the Convention relating to the Status of Stateless Persons, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the four Geneva Conventions of 12 August 1949, the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1997. The Committee also encourages States parties to the Convention and others concerned to take into account the Office of the United Nations High Commissioner for Refugees Guidelines on Protection and Care (1994) and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children.[1]

16. In view of the absolute nature of obligations deriving from the Convention and their *lex specialis* character, article 2, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights would not apply with regard to unaccompanied and separated children. In application of article 4 of the Convention, the particular vulnerability of unaccompanied and separated children, explicitly recognized in article 20 of the Convention, must be taken into account and will result in making the assignment of available resources to such children a priority. States are expected to accept and facilitate assistance offered within their respective mandates by UNICEF, UNHCR and other agencies (art. 22, para. 2 of the Convention) in order to meet the needs of unaccompanied and separated children.

17. The Committee believes that reservations made by States parties to the Convention should not in any way limit the rights of unaccompanied and separated children. As is systematically done with States parties during the reporting process, the Committee recommends that, in the light of the Vienna Declaration and Programme of Action adopted at the 1993 World Conference on Human Rights in Vienna,[2] reservations limiting the rights of unaccompanied and separated children be reviewed with the objective of withdrawal.

(b) Non-discrimination (art. 2)

18. The principle of non-discrimination, in all its facets, applies in respect to all dealings with separated and unaccompanied children. In particular, it prohibits any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law, entail individual rather than collective assessment, comply with the principle of proportionality, and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.

(c) Best interests of the child as a primary consideration in the search for short- and long-term solutions (art. 3)

19. Article 3, paragraph 1, states that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life.

20. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques.

21. Subsequent steps, such as the appointment of a competent guardian as expeditiously as possible, serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child. Therefore, such a child should only be referred to asylum or other procedures after the appointment of a guardian. In cases where separated or unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative in addition to a guardian.

22. Respect for best interests also requires that, where competent authorities have placed an unaccompanied or separated child "for the purposes of care, protection or treatment of his or her physical or mental health", the State recognizes the right of that child to a "periodic review" of their treatment and "all other circumstances relevant to his or her placement" (art. 25 of the Convention).

(d) The right to life, survival and development (art. 6)

23. The obligation of the State party under article 6 includes protection from violence and exploitation, to the maximum extent possible, which would jeopardize a child's right to life, survival and development. Separated and unaccompanied children are vulnerable to various risks that affect their life, survival and development such as trafficking for purposes of sexual or other exploitation or involvement in criminal activities which could result in harm to the child, or in extreme cases, in death. Accordingly, article 6 necessitates vigilance by States parties in this regard, particularly when organized crime may be involved. While the issue of trafficking of children is beyond the scope of this general comment, the Committee notes that there is often a link between trafficking and the situation of separated and unaccompanied children.

24. The Committee is of the view that practical measures should be taken at all levels to protect children from the risks mentioned above. Such measures could include: priority procedures for child victims of trafficking, the prompt appointment of guardians, the provision of information to children about the risks they may encounter, and establishment of measures to provide follow-up to children particularly at risk. These measures should be regularly evaluated to ensure their effectiveness.

(e) Right of the child to express his or her views freely (art. 12)

25. Pursuant to article 12 of the Convention, in determining the measures to be adopted with regard to unaccompanied or separated children, the child's views and wishes should be elicited and taken into account (art. 12, para. 1). To allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin (arts. 13, 17 and 22, para. 2). In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account. Such information must be provided in a manner that is appropriate to the maturity and level of understanding of each child. As participation is dependent on reliable communication, where necessary, interpreters should be made available at all stages of the procedure.

(f) Respect for the principle of non-refoulement

26. In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of CAT.

27. Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services.

28. As underage recruitment and participation in hostilities entail a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects, and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.

(g) Confidentiality

29. States parties must protect the confidentiality of information received in relation to an unaccompanied or separated child, consistent with the obligation to protect the child's rights, including the right to privacy (art. 16). This obligation applies in all settings, including health and social welfare. Care must be taken that information sought and legitimately shared for one purpose is not inappropriately used for that of another.

30. Confidentiality concerns also involve respect for the rights of others. For example, in obtaining, sharing and preserving the information collected in respect of unaccompanied and separated children, particular care must be taken in order not to endanger the well-being of persons still within the child's country of origin, especially the child's family members. Furthermore, information relating to the whereabouts of the child shall only be withheld vis-à-vis the parents where required for the safety of the child or to otherwise secure the "best interests" of the child.

V. RESPONSE TO GENERAL AND SPECIFIC PROTECTION NEEDS

(a) Initial assessment and measures

31. The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children. This necessary initial assessment process, in particular, entails the following:

(i) Prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities (art. 8). Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child- and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such;

(ii) Prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner, in a language the child understands, by professionally qualified persons to collect biodata and social history to ascertain the identity of the child, including, wherever possible, identity of both parents, other siblings, as well as the citizenship of the child, the siblings and the parents;

(iii) In continuation of the registration process, the recording of further information in order to meet the specific needs of the child. This information should include:

- Reasons for being separated or unaccompanied;
- Assessment of particular vulnerabilities, including health, physical, psychosocial, material and other protection needs, including those deriving from domestic violence, trafficking or trauma;
- All available information to determine the potential existence of international protection needs, including those: due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" in the child's country of origin (article 1 A (2), 1951 Refugee Convention); deriving from external aggression, occupation, foreign domination or events seriously disturbing public order (article 1 (2), Convention Governing the Specific Aspects of Refugee Problems in Africa); or relating to the indiscriminate effects of generalized violence;

(iv) Unaccompanied and separated children should be provided with their own personal identity documentation as soon as possible;

(v) Tracing of family members to be commenced as early as possible (arts. 22, para. 2; 9, para. 3; and 10, para. 2).

32. Any further actions relating to the residence and other status of the child in the territory of the State should be based on the findings of an initial protection assessment carried out in accordance with the above procedures. States should refrain from referring unaccompanied and separated children into asylum procedures if their presence in the territory does not raise the question of international refugee protection needs. This is without prejudice to the obligation of States to refer unaccompanied or separated children to relevant procedures serving child protection, such as those foreseen under child welfare legislation.

(b) Appointment of a guardian or adviser and legal representative (arts. 18, para. 2, and 20, para. 1)

33. States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations. The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. The guardian or adviser should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately covered by, inter alia, the guardian acting as a link between the child and existing specialist agencies/individuals who provide the continuum of care required by the child. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. For example, non-related adults whose primary relationship to the child is that of an employer should be excluded from a guardianship role.

34. In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely. If such a guardian is able and willing to provide day-to-day care, but unable to adequately represent the child's best interests in all spheres and at all levels of the child's life, supplementary measures (such as the appointment of an adviser or legal representative) must be secured.

35. Review mechanisms shall be introduced and implemented to monitor the quality of the exercise of guardianship in order to ensure the best interests of the child are being represented throughout the decision-making process and, in particular, to prevent abuse.

36. In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.

37. At all times children should be informed of arrangements with respect to guardianship and legal representation and their opinions should be taken into consideration.

38. In large-scale emergencies, where it will be difficult to establish guardianship arrangements on an individual basis, the rights and best interests of separated children should be safeguarded and promoted by States and organizations working on behalf of these children.

(c) Care and accommodation arrangements (arts. 20 and 22)

39. Unaccompanied or separated children are children temporarily or permanently deprived of their family environment and, as such, are beneficiaries of States' obligations under article 20 of the Convention and shall be entitled to special protection and assistance provided by the relevant State.

40. Mechanisms established under national law in order to ensure alternative care for such children in accordance with article 22 of the Convention, shall also cover unaccompanied or separated children outside their country of origin. A wide range of options for care and accommodation arrangements exist and are explicitly acknowledged in article 20, paragraph 3, as follows: "... inter alia, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children". When selecting from these options, the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child's age and gender, should be taken into account. In particular, due regard ought to be taken of the desirability of continuity in a child's upbringing and to the ethnic, religious, cultural and linguistic background as assessed in the identification, registration and documentation process. Such care and accommodation arrangements should comply with the following parameters:

- Children should not, as a general rule, be deprived of liberty;
- In order to ensure continuity of care and considering the best interests of the child, changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interests of the child;
- In accordance with the principle of family unity, siblings should be kept together;
- A child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interests of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel;
- Irrespective of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be maintained by qualified persons in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational skills and opportunities;

- States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households;

- In large-scale emergencies, interim care must be provided for the shortest time appropriate for unaccompanied children. This interim care provides for their security and physical and emotional care in a setting that encourages their general development; and

- Children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.

(d) Full access to education (arts. 28; 29, para. 1 (c); 30; and 32)

41. States should ensure that access to education is maintained during all phases of the displacement cycle. Every unaccompanied and separated child, irrespective of status, shall have full access to education in the country that they have entered in line with articles 28, 29, paragraph 1 (c), 30 and 32 of the Convention and the general principles developed by the Committee. Such access should be granted without discrimination and in particular, separated and unaccompanied girls shall have equal access to formal and informal education, including vocational training at all levels. Access to quality education should also be ensured for children with special needs, in particular children with disabilities.

42. The unaccompanied or separated child should be registered with appropriate school authorities as soon as possible and get assistance in maximizing learning opportunities. All unaccompanied and separated children have the right to maintain their cultural identity and values, including the maintenance and development of their native language. All adolescents should be allowed to enrol in vocational/professional training or education, and early learning programmes should be made available to young children. States should ensure that unaccompanied or separated children are provided with school certificates or other documentation indicating their level of education, in particular in preparation of relocation, resettlement or return.

43. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22, para. 2) in order to meet the educational needs of unaccompanied and separated children.

(e) Right to an adequate standard of living (art. 27)

44. States should ensure that separated and unaccompanied children have a standard of living adequate for their physical, mental, spiritual and moral development. As provided in article 27, paragraph 2, of the Convention, States shall provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

45. States shall, in particular where government capacity is limited, accept and facilitate the assistance offered by UNICEF, UNESCO, UNHCR and other United Nations agencies within

their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations (art. 22, para. 2) in order to secure an adequate standard of living for unaccompanied and separated children.

(f) Right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (arts. 23, 24 and 39)

46. When implementing the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health under article 24 of the Convention, States are obligated to ensure that unaccompanied and separated children have the same access to health care as children who are ... nationals ...

47. In ensuring their access, States must assess and address the particular plight and vulnerabilities of such children. They should, in particular, take into account the fact that unaccompanied children have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence. Many such children, in particular those who are refugees, have further experienced pervasive violence and the stress associated with a country afflicted by war. This may have created deep-rooted feelings of helplessness and undermined a child's trust in others. Moreover, girls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.

48. The obligation under article 39 of the Convention sets out the duty of States to provide rehabilitation services to children who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflicts. In order to facilitate such recovery and reintegration, culturally appropriate and gender-sensitive mental health care should be developed and qualified psychosocial counselling provided.

49. States shall, in particular where government capacity is limited, accept and facilitate assistance offered by UNICEF, WHO, United Nations Joint Programme on HIV/AIDS (UNAIDS), UNHCR and other agencies (art. 22, para. 2) within their respective mandates, as well as, where appropriate, other competent intergovernmental organizations or non-governmental organizations in order to meet the health and health-care needs of unaccompanied and separated children.

(g) Prevention of trafficking and of sexual and other forms of exploitation, abuse and violence (arts. 34, 35 and 36)

50. Unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation.

51. Articles 34 to 36 of the Convention must be read in conjunction with special protection and assistance obligations to be provided according to article 20 of the Convention, in order to ensure that unaccompanied and separated children are shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence.

52. Trafficking of such a child, or "re-trafficking" in cases where a child was already a victim of trafficking, is one of many dangers faced by unaccompanied or separated children. Trafficking in children is a threat to the fulfilment of their right to life, survival and development (art. 6). In accordance with article 35 of the Convention, States parties should take appropriate measures to prevent such trafficking. Necessary measures include identifying unaccompanied and separated children, regularly inquiring as to their whereabouts; and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child. Adequate legislation should also be passed and effective mechanisms of enforcement be established with respect to labour regulations and border crossing.

53. Risks are also great for a child who has already been a victim of trafficking, resulting in the status of being unaccompanied or separated. Such children should not be penalized and should receive assistance as victims of a serious human rights violation. Some trafficked children may be eligible for refugee status under the 1951 Convention, and States should ensure that separated and unaccompanied trafficked children who wish to seek asylum or in relation to whom there is otherwise indication that international protection needs exist, have access to asylum procedures. Children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken. States should consider complementary forms of protection for trafficked children when return is not in their best interests.

(h) Prevention of military recruitment and protection against effects of war (arts. 38 and 39)

Prevention of recruitment

54. State obligations deriving from article 38 of the Convention and from articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict also apply to unaccompanied and separated children. A State must take all necessary measures to prevent recruitment or use of such children by any party to a conflict. This also applies to former child soldiers who have defected from their units and who require protection against re-recruitment.

Care arrangements

55. Care arrangements for unaccompanied and separated children shall be made in a manner which prevents their recruitment, re-recruitment or use by any party to a conflict. Guardianships should not be given to individuals or organizations who are directly or indirectly involved in a conflict.

Former child soldiers

56. Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers, who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified

and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity.

57. If, under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where she or he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programmes.

Non-refoulement

58. As underage recruitment and participation in hostilities entails a high risk of irreparable harm involving fundamental human rights, including the right to life, State obligations deriving from article 38 of the Convention, in conjunction with articles 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entail extraterritorial effects and States shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of underage recruitment or participation, directly or indirectly, in hostilities.

Child-specific forms and manifestations of persecution[3]

59. Reminding States of the need for age and gender-sensitive asylum procedures and an age and gender-sensitive interpretation of the refugee definition, the Committee highlights that underage recruitment (including of girls for sexual services or forced marriage with the military) and direct or indirect participation in hostilities constitutes a serious human rights violation and thereby persecution, and should lead to the granting of refugee status where the well-founded fear of such recruitment or participation in hostilities is based on "reasons of race, religion, nationality, membership of a particular social group or political opinion" (article 1A (2), 1951 Refugee Convention).

Rehabilitation and recovery

60. States shall develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age-appropriate and gender-sensitive system of psychological support and assistance for unaccompanied and separated children affected by armed conflict.

(i) Prevention of deprivation of liberty and treatment in cases thereof

61. In application of article 37 of the Convention and the principle of the best interests of the child, unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. Where detention is exceptionally justified for other reasons, it shall be conducted in accordance with article 37, paragraph (b), of the

Convention that requires detention to conform to the law of the relevant country and only to be used as a measure of last resort and for the shortest appropriate period of time. In consequence, all efforts, including acceleration of relevant processes, should be made to allow for the immediate release of unaccompanied or separated children from detention and their placement in other forms of appropriate accommodation.

62. In addition to national requirements, international obligations constitute part of the law governing detention. With regard to asylum-seeking, unaccompanied and separated children, States must, in particular, respect their obligations deriving from article 31, paragraph 1, of the 1951 Refugee Convention. States should further take into account that illegal entry into or stay in a country by an unaccompanied or separated child may also be justified according to general principles of law, where such entry or stay is the only way of preventing a violation of the fundamental human rights of the child. More generally, in developing policies on unaccompanied or separated children, including those who are victims of trafficking and exploitation, States should ensure that such children are not criminalized solely for reasons of illegal entry or presence in the country.

63. In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37, paragraphs (a) and (c), of the Convention and other international obligations. Special arrangements must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered in the child's best interests not to do so. Indeed, the underlying approach to such a programme should be "care" and not "detention". Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable. Children should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel and their guardian. They should also be provided with the opportunity to receive all basic necessities as well as appropriate medical treatment and psychological counselling where necessary. During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release. They also have the right to recreation and play as provided for in article 31 of the Convention. In order to effectively secure the rights provided by article 37, paragraph (d), of the Convention, unaccompanied or separated children deprived of their liberty shall be provided with prompt and free access to legal and other appropriate assistance, including the assignment of a legal representative.

VI. ACCESS TO THE ASYLUM PROCEDURE, LEGAL SAFEGUARDS AND RIGHTS IN ASYLUM

(a) General

64. The obligation stemming from article 22 of the Convention to take "appropriate measures" to ensure that a child, whether unaccompanied or accompanied, who is seeking refugee status receives appropriate protection entails, inter alia, the responsibility to set up a functioning asylum system and, in particular, to enact legislation addressing the particular treatment of unaccompanied and separated children and to build capacities necessary to realize this treatment in accordance with applicable rights codified in the Convention and in other international human rights, refugee protection or humanitarian instruments to which the State is a party. States facing resource constraints in staging such capacity-building efforts are strongly encouraged to seek international assistance, including that provided by UNHCR.

65. Taking into account the complementary nature of the obligations under article 22 and those deriving from international refugee law, as well as the desirability of consolidated standards, States should apply international standards relating to refugees as they progressively evolve when implementing article 22 of the Convention.

(b) Access to asylum procedures, regardless of age

66. Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age. In the case that facts become known during the identification and registration process which indicate that the child may have a well-founded fear or, even if unable to explicitly articulate a concrete fear, the child may objectively be at risk of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or otherwise be in need of international protection, such a child should be referred to the asylum procedure and/or, where relevant, to mechanisms providing complementary protection under international and domestic law.

67. Unaccompanied or separated children for whom there is no indication of being in need of international protection should not automatically, or otherwise, be referred to asylum procedures, but shall be protected pursuant to other relevant child protection mechanisms such as those provided under youth welfare legislation.

(c) Procedural safeguards and support measures (art. 3, para. 3)

68. Appropriate measures required under article 22, paragraph 1, of the Convention must take into account the particular vulnerabilities of unaccompanied and separated children and the national legal framework and conditions. Such measures should be guided by the considerations set out below.

69. An asylum-seeking child should be represented by an adult who is familiar with the child's background and who is competent and able to represent his or her best interests (see section V (b), "Appointment of a guardian or adviser or legal representative"). The unaccompanied or separated child should also, in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults.

70. Refugee status applications filed by unaccompanied and separated children shall be given priority and every effort should be made to render a decision promptly and fairly.

71. Minimum procedural guarantees should include that the application will be determined by a competent authority fully qualified in asylum and refugee matters. Where the age and maturity of the child permits, the opportunity for a personal interview with a qualified official should be granted before any final decision is made. Wherever the child is unable to communicate directly with the qualified official in a common language, the assistance of a qualified interpreter should be sought. Moreover, the child should be given the "benefit of the doubt", should there be credibility concerns relating to his or her story as well as a possibility to appeal for a formal review of the decision.

72. The interviews should be conducted by representatives of the refugee determination authority who will take into account the special situation of unaccompanied children in order to carry out the refugee status assessment and apply an understanding of the history, culture and background of the child. The assessment process should comprise a case-by-case examination of the unique combination of factors presented by each child, including the child's personal, family and cultural background. The guardian and the legal representative should be present during all interviews.

73. In cases of large-scale refugee movements where individual refugee status determination is not possible, States may grant refugee status to all members of a group. In such circumstances, all unaccompanied or separated children are entitled to be granted the same status as other members of the particular group.

(d) Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature

74. When assessing refugee claims of unaccompanied or separated children, States shall take into account the development of, and formative relationship between, international human rights and refugee law, including positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention. In particular, the refugee definition in that Convention must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin, underage recruitment, trafficking of children for prostitution, and sexual exploitation or subjection to female genital mutilation are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures.

75. Staff involved in status-determination procedures of children, in particular those who are unaccompanied or separated, should receive training on adopting an application of international and national refugee law that is child, cultural, and gender-sensitive. To properly assess asylum claims of children, information on the situation of children, including those belonging to minorities or marginalized groups, should be included in government efforts to collect country-of-origin information.

(e) Full enjoyment of all international refugee and human rights by children granted refugee status (art. 22)

76. Unaccompanied or separated children recognized as refugees and granted asylum do not only enjoy rights under the 1951 Refugee Convention, but are also entitled to the fullest extent to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

(f) Children to benefit from complementary forms of protection

77. In the case that the requirements for granting refugee status under the 1951 Refugee Convention are not met, unaccompanied and separated children shall benefit from available forms of complementary protection to the extent determined by their protection needs. The

application of such complementary forms of protection does not obviate States' obligations to address the particular protection needs of the unaccompanied and separated child. Therefore, children granted complementary forms of protection are entitled, to the fullest extent, to the enjoyment of all human rights granted to children in the territory or subject to the jurisdiction of the State, including those rights which require a lawful stay in the territory.

78. In line with the generally applicable principles and, in particular, those relating to the responsibilities of States with regard to unaccompanied or separated children finding themselves in their territory, children who are neither granted refugee status nor benefiting from complementary forms of protection, will still enjoy protection under all norms of the Convention as long as they remain de facto within the States' territories and/or subject to its jurisdiction.

VII. FAMILY REUNIFICATION, RETURN AND OTHER FORMS OF DURABLE SOLUTIONS

(a) General

79. The ultimate aim in addressing the fate of unaccompanied or separated children is to identify a durable solution that addresses all their protection needs, takes into account the child's view and, wherever possible, leads to overcoming the situation of a child being unaccompanied or separated. Efforts to find durable solutions for unaccompanied or separated children should be initiated and implemented without undue delay and, wherever possible, immediately upon the assessment of a child being unaccompanied or separated. Following a rights-based approach, the search for a durable solution commences with analysing the possibility of family reunification.

80. Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing, or the way in which tracing is conducted, would be contrary to the best interests of the child or jeopardize fundamental rights of those being traced. In any case, in conducting tracing activities, no reference should be made to the status of the child as an asylum-seeker or refugee. Subject to all of these conditions, such tracing efforts should also be continued during the asylum procedure. For all children who remain in the territory of the host State, whether on the basis of asylum, complementary forms of protection or due to other legal or factual obstacles to removal, a durable solution must be sought.

(b) Family reunification

81. In order to pay full respect to the obligation of States under article 9 of the Convention to ensure that a child shall not be separated from his or her parents against their will, all efforts should be made to return an unaccompanied or separated child to his or her parents except where further separation is necessary for the best interests of the child, taking full account of the right of the child to express his or her views (art. 12) (see also section IV (e), "Right of the child to express his or her views freely"). While the considerations explicitly listed in article 9, paragraph 1, sentence 2, namely, cases involving abuse or neglect of the child by the parents, may prohibit reunification at any location, other best-interests considerations can provide an obstacle to reunification at specific locations only.

82. Family reunification in the country of origin is not in the best interests of the child and should therefore not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child. Such risk is indisputably documented

in the granting of refugee status or in a decision of the competent authorities on the applicability of non-refoulement obligations (including those deriving from article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and articles 6 and 7 of the International Covenant on Civil and Political Rights). Accordingly, the granting of refugee status constitutes a legally binding obstacle to return to the country of origin and, consequently, to family reunification therein. Where the circumstances in the country of origin contain lower-level risks and there is concern, for example, of the child being affected by the indiscriminate effects of generalized violence, such risks must be given full attention and balanced against other rights-based considerations, including the consequences of further separation. In this context, it must be recalled that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

83. Whenever family reunification in the country of origin is not possible, irrespective of whether this is due to legal obstacles to return or whether the best-interests-based balancing test has decided against return, the obligations under articles 9 and 10 of the Convention come into effect and should govern the host country's decisions on family reunification therein. In this context, States parties are particularly reminded that "applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner" and "shall entail no adverse consequences for the applicants and for the members of their family" (art. 10, para. 1). Countries of origin must respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country" (art. 10, para. 2).

(c) Return to the country of origin

84. Return to the country of origin is not an option if it would lead to a "reasonable risk" that such return would result in the violation of fundamental human rights of the child, and in particular, if the principle of non-refoulement applies. Return to the country of origin shall in principle only be arranged if such return is in the best interests of the child. Such a determination shall, inter alia, take into account:

- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return, including through home study, where appropriate, conducted by social network organizations;
- The availability of care arrangements for that particular child;
- The views of the child expressed in exercise of his or her right to do so under article 12 and those of the caretakers;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right "to preserve his or her identity, including nationality, name and family relations" (art. 8); and
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (art. 20).

85. In the absence of the availability of care provided by parents or members of the extended family, return to the country of origin should, in principle, not take place without advance secure and concrete arrangements of care and custodial responsibilities upon return to the country of origin.

86. Exceptionally, a return to the home country may be arranged, after careful balancing of the child's best interests and other considerations, if the latter are rights-based and override best interests of the child. Such may be the case in situations in which the child constitutes a serious risk to the security of the State or to the society. Non-rights-based arguments, such as those relating to general migration control, cannot override best interests considerations.

87. In all cases return measures must be conducted in a safe, child-appropriate and gender-sensitive manner.

88. Countries of origin are also reminded in this context of their obligations pursuant to article 10 of the Convention and, in particular, to respect "the right of the child and his or her parents to leave any country, including their own, and to enter their own country".

(d) Local integration

89. Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the Convention rights that are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or whether the best-interests-based balancing test has decided against return.

90. Once it has been determined that a separated or unaccompanied child will remain in the community, the relevant authorities should conduct an assessment of the child's situation and then, in consultation with the child and his or her guardian, determine the appropriate long-term arrangements within the local community and other necessary measures to facilitate such integration. The long-term placement should be decided in the best interests of the child and, at this stage, institutional care should, wherever possible, serve only as a last resort. The separated or unaccompanied child should have the same access to rights (including to education, training, employment and health care) as enjoyed by national children. In ensuring that these rights are fully enjoyed by the unaccompanied or separated child, the host country may need to pay special attention to the extra measures required to address the child's vulnerable status, including, for example, through extra language training.

(e) Intercountry adoption (art. 21)

91. States must have full respect for the preconditions provided under article 21 of the Convention as well as other relevant international instruments, including in particular the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and its 1994 Recommendation Concerning the Application to Refugee and other Internationally Displaced Children when considering the adoption of unaccompanied and separated children. States should, in particular, observe the following:

- Adoption of unaccompanied or separated children should only be considered once it has been established that the child is in a position to be adopted. In practice, this means, inter alia, that efforts with regard to tracing and family reunification have failed, or that the parents have consented to the adoption. The consent of parents and the consent of other persons, institutions and authorities that are necessary for adoption must be free and informed. This supposes notably that such consent has not been induced by payment or compensation of any kind and has not been withdrawn;

- Unaccompanied or separated children must not be adopted in haste at the height of an emergency;

- Any adoption must be determined as being in the child's best interests and carried out in keeping with applicable national, international and customary law;

- The views of the child, depending upon his/her age and degree of maturity, should be sought and taken into account in all adoption procedures. This requirement implies that he/she has been counselled and duly informed of the consequences of adoption and of his/her consent to adoption, where such consent is required. Such consent must have been given freely and not induced by payment or compensation of any kind;

- Priority must be given to adoption by relatives in their country of residence. Where this is not an option, preference will be given to adoption within the community from which the child came or at least within his or her own culture;

- Adoption should not be considered:

  - Where there is reasonable hope of successful tracing and family reunification is in the child's best interests;

  - If it is contrary to the expressed wishes of the child or the parents;

  - Unless a reasonable time has passed during which all feasible steps to trace the parents or other surviving family members has been carried out. This period of time may vary with circumstances, in particular, those relating to the ability to conduct proper tracing; however, the process of tracing must be completed within a reasonable period of time;

- Adoption in a country of asylum should not be taken up when there is the possibility of voluntary repatriation under conditions of safety and dignity in the near future.

(f) Resettlement in a third country

92. Resettlement to a third country may offer a durable solution for an unaccompanied or separated child who cannot return to the country of origin and for whom no durable solution can be envisaged in the host country. The decision to resettle an unaccompanied or separated child

must be based on an updated, comprehensive and thorough best-interests assessment, taking into account, in particular, ongoing international and other protection needs. Resettlement is particularly called for if such is the only means to effectively and sustainably protect a child against refoulement or against persecution or other serious human rights violations in the country of stay. Resettlement is also in the best interests of the unaccompanied or separated child if it serves family reunification in the resettlement country.

93. The best-interests assessment determination, prior to a decision to resettle, needs also to take into account other factors, such as: the envisaged duration of legal or other obstacles to a child's return to his or her home country; the child's right to preserve his or her identity, including nationality and name (art. 8); the child's age, sex, emotional state, educational and family background; continuity/discontinuity of care in the host country; the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20); the right of the child to preserve his or her family relations (art. 8) and related short, medium and long-term possibilities of family reunion either in the home, host, or resettlement country. Unaccompanied or separated children should never be resettled to a third country if this would undermine or seriously hamper future reunion with their family.

94. States are encouraged to provide resettlement opportunities in order to meet all the resettlement needs related to unaccompanied and separated children.

VIII. TRAINING, DATA AND STATISTICS

(a) Training of personnel dealing with unaccompanied and separated children

95. Particular attention should be paid to the training of officials working with separated and unaccompanied children and dealing with their cases. Specialized training is equally important for legal representatives, guardians, interpreters and others dealing with separated and unaccompanied children.

96. Such training should be specifically tailored to the needs and rights of the groups concerned. Nevertheless, certain key elements should be included in all training programmes, including:

- Principles and provisions of the Convention;
- Knowledge of the country of origin of separated and unaccompanied children;
- Appropriate interview techniques;
- Child development and psychology; and
- Cultural sensitivity and intercultural communication.

97. Initial training programmes should also be followed up regularly, including through on-the-job learning and professional networks.

(b) Data and statistics on separated and unaccompanied children

98. It is the experience of the Committee that data and statistics collected with regard to unaccompanied and separated children tends to be limited to the number of arrivals and/or number of requests for asylum. This data is insufficient for a detailed analysis of the implementation of the rights of such children. Furthermore, data and statistics are often collected by a variety of different ministries or agencies, which can impede further analysis and presents potential concerns with regard to confidentiality and a child's right to privacy.

99. Accordingly, the development of a detailed and integrated system of data collection on unaccompanied and separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.

100. Data collected within such a system should ideally include but not be limited to: basic biographical data on each child (including age, sex, country of origin and nationality, ethnic group); total number of unaccompanied and separated children attempting to enter the country and the number that have been refused entry; number of requests for asylum; number of legal representatives and guardians assigned to such children; legal and immigration status (i.e. asylum-seeker, refugee, temporary resident permit); living arrangements (i.e. in institutions, with families or living independently); enrolment in school or vocational training; family reunifications; and numbers returned to their country of origin. In addition, States parties should consider collecting qualitative data that would allow them to analyse issues that remain insufficiently addressed, such as for instance, disappearances of unaccompanied and separated children and the impact of trafficking.

Notes

[1] These Guiding Principles are jointly endorsed by the International Committee of the Red Cross, the International Rescue Committee, Save the Children/UK, UNICEF, UNHCR, and World Vision International. They are intended to guide the work of all members of the Inter-Agency Standing Committee with respect to unaccompanied and separated children.

[2] Vienna Declaration and Programme of Action (A/CONF.157/23) adopted by the World Conference on Human Rights, held in Vienna, 14-25 June 1993.

[3] On child-specific forms and manifestations of persecution more generally, see section VI (d) on "Child-sensitive assessment of protection needs, taking into account persecution of a child-specific nature".

Annex III

GENERAL COMMENT No. 7 (2005)

Implementing child rights in early childhood

I. INTRODUCTION

1. This general comment arises out of the Committee's experiences of reviewing States parties' reports. In many cases, very little information has been offered about early childhood, with comments limited mainly to child mortality, birth registration and health care. The Committee felt the need for a discussion on the broader implications of the Convention on the Rights of the Child for young children. Accordingly, in 2004, the Committee devoted its day of general discussion to the theme "Implementing child rights in early childhood". This resulted in a set of recommendations (see CRC/C/143, sect. VII) as well as the decision to prepare a general comment on this important topic. Through this general comment, the Committee wishes to encourage recognition that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for the realization of these rights. The Committee's working definition of "early childhood" is all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school (see paragraph 4 below).

II. OBJECTIVES OF THE GENERAL COMMENT

2. The objectives of the general comment are:

(a) To strengthen understanding of the human rights of all young children and to draw States parties' attention to their obligations towards young children;

(b) To comment on the specific features of early childhood that impact on the realization of rights;

(c) To encourage recognition of young children as social actors from the beginning of life, with particular interests, capacities and vulnerabilities, and of requirements for protection, guidance and support in the exercise of their rights;

(d) To draw attention to diversities within early childhood that need to be taken into account when implementing the Convention, including diversities in young children's circumstances, in the quality of their experiences and in the influences shaping their development;

(e) To point to variations in cultural expectations and treatment of children, including local customs and practices that should be respected, except where they contravene the rights of the child;

(f) To emphasize the vulnerability of young children to poverty, discrimination, family breakdown and multiple other adversities that violate their rights and undermine their well-being; and

(g) To contribute to the realization of rights for all young children through formulation and promotion of comprehensive policies, laws, programmes, practices, professional training and research specifically focused on rights in early childhood.

III. HUMAN RIGHTS AND YOUNG CHILDREN

3. **Young children are rights holders.** The Convention on the Rights of the Child defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier" (art. 1). Consequently, young children are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights.

4. **Definition of early childhood.** Definitions of early childhood vary in different countries and regions, according to local traditions and the organization of primary school systems. In some countries, the transition from preschool to school occurs soon after 4 years old. In other countries, this transition takes place at around 7 years old. In its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school. Accordingly, the Committee proposes as an appropriate working definition of early childhood the period from birth to the age of 8 years; States parties should review their obligations towards young children in the context of this definition.

5. **A positive agenda for early childhood.** The Committee encourages States parties to construct a positive agenda for rights in early childhood. A shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status is required. The Convention requires that children, including the very youngest children, be respected as persons in their own right. Young children should be recognized as active members of families, communities and societies, with their own concerns, interests and points of view. For the exercise of their rights, young children have particular requirements for physical nurturance, emotional care and sensitive guidance, as well as for time and space for social play, exploration and learning. These requirements can best be planned for within a framework of laws, policies and programmes for early childhood, including a plan for implementation and independent monitoring, for example through the appointment of a children's rights commissioner, and through assessments of the impact of laws and policies on children (see general comment No. 2 (2002) on the role of independent human rights institutions, paragraph 19).

6. **Features of early childhood.** Early childhood is a critical period for realizing children's rights. During this period:

(a) Young children experience the most rapid period of growth and change during the human lifespan, in terms of their maturing bodies and nervous systems, increasing mobility, communication skills and intellectual capacities, and rapid shifts in their interests and abilities;

(b) Young children form strong emotional attachments to their parents or other caregivers, from whom they seek and require nurturance, care, guidance and protection, in ways that are respectful of their individuality and growing capacities;

(c) Young children establish their own important relationships with children of the same age, as well as with younger and older children. Through these relationships they learn to negotiate and coordinate shared activities, resolve conflicts, keep agreements and accept responsibility for others;

(d) Young children actively make sense of the physical, social and cultural dimensions of the world they inhabit, learning progressively from their activities and their interactions with others, children as well as adults;

(e) Young children's earliest years are the foundation for their physical and mental health, emotional security, cultural and personal identity, and developing competencies;

(f) Young children's experiences of growth and development vary according to their individual nature, as well as their gender, living conditions, family organization, care arrangements and education systems; and

(g) Young children's experiences of growth and development are powerfully shaped by cultural beliefs about their needs and proper treatment, and about their active role in family and community.

7. Respecting the distinctive interests, experiences and challenges facing every young child is the starting point for realizing their rights during this crucial phase of their lives.

8. **Research into early childhood.** The Committee notes the growing body of theory and research which confirms that young children are best understood as social actors whose survival, well-being and development are dependent on and built around close relationships. These relationships are normally with a small number of key people, most often parents, members of the extended family and peers, as well as caregivers and other early childhood professionals. At the same time, research into the social and cultural dimensions of early childhood draws attention to the diverse ways in which early development is understood and enacted, including varying expectations of the young child and arrangements for his or her care and education. A feature of modern societies is that increasing numbers of young children are growing up in multicultural communities and in contexts marked by rapid social change, where beliefs and expectations about young children are also changing, including through greater recognition of their rights. States parties are encouraged to draw on beliefs and knowledge about early childhood in ways that are appropriate to local circumstances and changing practices, and respect traditional values, provided these are not discriminatory, (article 2 of the Convention) nor prejudicial to children's health and well-being (art. 24, para. 3), nor against their best interests (art. 3). Finally, research has highlighted the particular risks to young children from malnutrition, disease, poverty, neglect, social exclusion and a range of other adversities. It shows that proper prevention and intervention strategies during early childhood have the potential to impact positively on young children's current well-being and future prospects. Implementing child rights in early childhood is thus an effective way to help prevent personal, social and educational difficulties during middle childhood and adolescence (see general comment No. 4 (2003) on adolescent health and development).

III. GENERAL PRINCIPLES AND RIGHTS IN EARLY CHILDHOOD

9. The Committee has identified articles 2, 3, 6 and 12 of the Convention as general principles (see general comment No. 5 (2003) on the general measures of implementation of the Convention). Each principle has implications for rights in early childhood.

10. **Right to life, survival and development.** Article 6 refers to the child's inherent right to life and States parties' obligation to ensure, to the maximum extent possible, the survival and development of the child. States parties are urged to take all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during this critical phase of their lives. Malnutrition and preventable diseases continue to be major obstacles to realizing rights in early childhood. Ensuring survival and physical health are priorities, but States parties are reminded that article 6 encompasses all aspects of development, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention (see section VI below). The Committee reminds States parties (and others concerned) that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play (arts. 24, 27, 28, 29 and 31), as well as through respect for the responsibilities of parents and the provision of assistance and quality services (arts. 5 and 18). From an early age, children should themselves be included in activities promoting good nutrition and a healthy and disease-preventing lifestyle.

11. **Right to non-discrimination.** Article 2 ensures rights to every child, without discrimination of any kind. The Committee urges States parties to identify the implications of this principle for realizing rights in early childhood.

(a) Article 2 means that young children in general must not be discriminated against on any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. Young children are especially at risk of discrimination because they are relatively powerless and depend on others for the realization of their rights;

(b) Article 2 also means that particular groups of young children must not be discriminated against. Discrimination may take the form of reduced levels of nutrition, inadequate care and attention; restricted opportunities for play, learning and education; or inhibition of free expression of feelings and views. Discrimination may also be expressed through harsh treatment and unreasonable expectations, which may be exploitative or abusive. For example:

(i) Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of selective abortion, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy. They may be expected to undertake excessive family responsibilities and deprived of opportunities to participate in early childhood and primary education;

(ii) Discrimination against children with disabilities reduces survival prospects and quality of life. These children are entitled to the care, nutrition, nurturance and encouragement offered other children. They may also require additional, special assistance in order to ensure their integration and the realization of their rights;

(iii) Discrimination against children infected with or affected by HIV/AIDS deprives them of the help and support they most require. Discrimination may be found within public policies, in the provision of and access to services, as well as in everyday practices that violate these children's rights (see also paragraph 27);

(iv) Discrimination related to ethnic origin, class/caste, personal circumstances and lifestyle, or political and religious beliefs (of children or their parents) excludes children from full participation in society. It affects parents' capacities to fulfil their responsibilities towards their children. It affects children's opportunities and self-esteem, as well as encouraging resentment and conflict among children and adults;

(v) Young children who suffer multiple discrimination (e.g. related to ethnic origin, social and cultural status, gender and/or disabilities) are especially at risk.

12. Young children may also suffer the consequences of discrimination against their parents, for example if children have been born out of wedlock or in other circumstances that deviate from traditional values, or if their parents are refugees or asylum-seekers. States parties have a responsibility to monitor and combat discrimination in whatever forms it takes and wherever it occurs - within families, communities, schools or other institutions. Potential discrimination in access to quality services for young children is a particular concern, especially where health, education, welfare and other services are not universally available and are provided through a combination of State, private and charitable organizations. As a first step, the Committee encourages States parties to monitor the availability of and access to quality services that contribute to young children's survival and development, including through systematic data collection, disaggregated in terms of major variables related to children's and families' background and circumstances. As a second step, actions may be required that guarantee that all children have an equal opportunity to benefit from available services. More generally, States parties should raise awareness about discrimination against young children in general, and against vulnerable groups in particular.

13. **Best interests of the child.** Article 3 sets out the principle that the best interests of the child are a primary consideration in all actions concerning children. By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities. The principle of best interests appears repeatedly within the Convention (including in articles 9, 18, 20 and 21, which are most relevant to early childhood). The principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights.

(a) *Best interests of individual children*. All decision-making concerning a child's care, health, education, etc. must take account of the best interests principle, including decisions by parents, professionals and others responsible for children. States parties are urged to make provisions for young children to be represented independently in all legal proceedings by someone who acts for the child's interests, and for children to be heard in all cases where they are capable of expressing their opinions or preferences;

(b) *Best interests of young children as a group or constituency*. All law and policy development, administrative and judicial decision-making and service provision that affect children must take account of the best interests principle. This includes actions directly affecting children (e.g. related to health services, care systems, or schools), as well as actions that indirectly impact on young children (e.g. related to the environment, housing or transport).

14 **Respect for the views and feelings of the young child.** Article 12 states that the child has a right to express his or her views freely in all matters affecting the child, and to have them taken into account. This right reinforces the status of the young child as an active participant in the promotion, protection and monitoring of their rights. Respect for the young child's agency - as a participant in family, community and society - is frequently overlooked, or rejected as inappropriate on the grounds of age and immaturity. In many countries and regions, traditional beliefs have emphasized young children's need for training and socialization. They have been regarded as undeveloped, lacking even basic capacities for understanding, communicating and making choices. They have been powerless within their families, and often voiceless and invisible within society. The Committee wishes to emphasize that article 12 applies both to younger and to older children. As holders of rights, even the youngest children are entitled to express their views, which should be "given due weight in accordance with the age and maturity of the child" (art. 12, para. 1). Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language. In this regard:

(a) The Committee encourages States parties to take all appropriate measures to ensure that the concept of the child as rights holder with freedom to express views and the right to be consulted in matters that affect him or her is implemented from the earliest stage in ways appropriate to the child's capacities, best interests, and rights to protection from harmful experiences;

(b) The right to express views and feelings should be anchored in the child's daily life at home (including, when applicable, the extended family) and in his or her community, within the full range of early childhood health, care and education facilities, as well as in legal proceedings, and in the development of policies and services, including through research and consultations;

(c) States parties should take all appropriate measures to promote the active involvement of parents, professionals and responsible authorities in the creation of opportunities for young children to progressively exercise their rights within their everyday activities in all relevant settings, including by providing training in the necessary skills. To achieve the right of participation requires adults to adopt a child-centred attitude, listening to young children and

respecting their dignity and their individual points of view. It also requires adults to show patience and creativity by adapting their expectations to a young child's interests, levels of understanding and preferred ways of communicating.

IV. PARENTAL RESPONSIBILITIES AND ASSISTANCE FROM STATES PARTIES

15. **A crucial role for parents and other primary caregivers.** Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on States parties to provide assistance, including quality childcare services (especially article 18). The preamble to the Convention refers to the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children". The Committee recognizes that "family" here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests.

16. **Parents/primary caregivers and children's best interests.** The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in "the exercise by the child of the rights in the Convention". This applies equally to younger as to older children. Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights.

17. **Evolving capacities as an enabling principle.** Article 5 draws on the concept of "evolving capacities" to refer to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding, including acquiring understanding about their rights and about how they can best be realized. Respecting young children's evolving capacities is crucial for the realization of their rights, and especially significant during early childhood, because of the rapid transformations in children's physical, cognitive, social and emotional functioning, from earliest infancy to the beginnings of schooling. Article 5 contains the principle that parents (and others) have the responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments take account of a child's interests and wishes as well as the child's capacities for autonomous decision-making and comprehension of his or her best interests. While a young child generally requires more guidance than an older child, it is important to take account of individual variations in the capacities of children of the same age and of their ways of reacting to situations. Evolving capacities should be seen as a positive and enabling process, not an excuse for

authoritarian practices that restrict children's autonomy and self-expression and which have traditionally been justified by pointing to children's relative immaturity and their need for socialization. Parents (and others) should be encouraged to offer "direction and guidance" in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including their right to participation (art. 12) and their right to freedom of thought, conscience and religion (art. 14).[1]

18. **Respecting parental roles.** Article 18 of the Convention reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern (arts. 18, para. 1 and 27, para. 2). States parties should respect the primacy of parents, mothers and fathers. This includes the obligation not to separate children from their parents, unless it is in the child's best interests (art. 9). Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers. They are also less able to comprehend the circumstances of any separation. Situations which are most likely to impact negatively on young children include neglect and deprivation of adequate parenting; parenting under acute material or psychological stress or impaired mental health; parenting in isolation; parenting which is inconsistent, involves conflict between parents or is abusive towards children; and situations where children experience disrupted relationships (including enforced separations), or where they are provided with low-quality institutional care. The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities, including by reducing harmful deprivations, disruptions and distortions in children's care; and to take action where young children's well-being may be at risk. States parties' overall goals should include reducing the number of young children abandoned or orphaned, as well as minimizing the numbers requiring institutional or other forms of long-term care, except where this is judged to be in a young child's best interests (see also section VI below).

19. **Social trends and the role of the family.** The Convention emphasizes that "both parents have common responsibilities for the upbringing and development of the child", with fathers and mothers recognized as equal caregivers (art. 18, para. 1). The Committee notes that in practice family patterns are variable and changing in many regions, as is the availability of informal networks of support for parents, with an overall trend towards greater diversity in family size, parental roles and arrangements for bringing up children. These trends are especially significant for young children, whose physical, personal and psychological development is best provided for within a small number of consistent, caring relationships. Typically, these relationships are with some combination of mother, father, siblings, grandparents and other members of the extended family, along with professional caregivers specialized in childcare and education. The Committee acknowledges that each of these relationships can make a distinctive contribution to the fulfilment of children's rights under the Convention and that a range of family patterns may be consistent with promoting children's well-being. In some countries and regions, shifting social attitudes towards family, marriage and parenting are impacting on young children's experiences of early childhood, for example following family separations and reformations. Economic pressures also impact on young children, for example, where parents are forced to work far away from their families and their communities. In other countries and regions, the illness and death of one or both parents or other kin due to HIV/AIDS is now a common feature of early childhood. These and many other factors impact on parents' capacities to fulfil their responsibilities towards children. More generally, during periods of rapid social change,

traditional practices may no longer be viable or relevant to present parental circumstances and lifestyles, but without sufficient time having elapsed for new practices to be assimilated and new parental competencies understood and valued.

20. **Assistance to parents.** States parties are required to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities (arts. 18, para. 2 and 18, para. 3), including assisting parents in providing living conditions necessary for the child's development (art. 27, para. 2) and ensuring that children receive necessary protection and care (art. 3, para. 2). The Committee is concerned that insufficient account is taken of the resources, skills and personal commitment required of parents and others responsible for young children, especially in societies where early marriage and parenthood is still sanctioned as well as in societies with a high incidence of young single parents. Early childhood is the period of most extensive (and intensive) parental responsibilities related to all aspects of children's well-being covered by the Convention: their survival, health, physical safety and emotional security; standards of living and care; opportunities for play and learning; and freedom of expression. Accordingly, realizing children's rights is in large measure dependent on the well-being and resources available to those with responsibility for their care. Recognizing these interdependencies is a sound starting point for planning assistance and services to parents, legal guardians and other caregivers. For example:

(a) An integrated approach would include interventions that impact indirectly on parents' ability to promote the best interests of children (e.g. taxation and benefits, adequate housing, working hours) as well as those that have more immediate consequences (e.g. perinatal health services for mother and baby, parent education, home visitors);

(b) Providing adequate assistance should take account of the new roles and skills required of parents, as well as the ways that demands and pressures shift during early childhood - for example, as children become more mobile, more verbally communicative, more socially competent, and as they begin to participate in programmes of care and education;

(c) Assistance to parents will include provision of parenting education, parent counselling and other quality services for mothers, fathers, siblings, grandparents and others who from time to time may be responsible for promoting the child's best interests;

(d) Assistance also includes offering support to parents and other family members in ways that encourage positive and sensitive relationships with young children and enhance understanding of children's rights and best interests.

21. Appropriate assistance to parents can best be achieved as part of comprehensive policies for early childhood (see section V below), including provision for health, care and education during the early years. States parties should ensure that parents are given appropriate support to enable them to involve young children fully in such programmes, especially the most disadvantaged and vulnerable groups. In particular, article 18, paragraph 3, acknowledges that many parents are economically active, often in poorly paid occupations that they combine with their parental responsibilities. Article 18, paragraph 3, requires States parties to take all appropriate measures to ensure that children of working parents have the right to benefit from childcare services, maternity protection and facilities for which they are eligible. In this regard, the Committee recommends that States parties ratify the Maternity Protection Convention, 2000 (No. 183) of the International Labour Organization.

V. COMPREHENSIVE POLICIES AND PROGRAMMES FOR EARLY CHILDHOOD, ESPECIALLY FOR VULNERABLE CHILDREN

22. **Rights based, multisectoral strategies.** In many countries and regions, early childhood has received low priority in the development of quality services. These services have often been fragmented. They have frequently been the responsibility of several government departments at central and local levels, and their planning has often been piecemeal and uncoordinated. In some cases, they have also been largely provided by the private and voluntary sector, without adequate resources, regulation or quality assurance. States parties are urged to develop rights-based, coordinated, multisectoral strategies in order to ensure that children's best interests are always the starting point for service planning and provision. These should be based around a systematic and integrated approach to law and policy development in relation to all children up to 8 years old. A comprehensive framework for early childhood services, provisions and facilities is required, backed up by information and monitoring systems. Comprehensive services will be coordinated with the assistance provided to parents and will fully respect their responsibilities, as well as their circumstances and requirements (as in articles 5 and 18 of the Convention; see section IV above). Parents should also be consulted and involved in the planning of comprehensive services.

23. **Programme standards and professional training appropriate to the age range.** The Committee emphasizes that a comprehensive strategy for early childhood must also take account of individual children's maturity and individuality, in particular recognizing the changing developmental priorities for specific age groups (for example, babies, toddlers, preschool and early primary school groups), and the implications for programme standards and quality criteria. States parties must ensure that the institutions, services and facilities responsible for early childhood conform to quality standards, particularly in the areas of health and safety, and that staff possess the appropriate psychosocial qualities and are suitable, sufficiently numerous and well-trained. Provision of services appropriate to the circumstances, age and individuality of young children requires that all staff be trained to work with this age group. Work with young children should be socially valued and properly paid, in order to attract a highly qualified workforce, men as well as women. It is essential that they have sound, up-to-date theoretical and practical understanding about children's rights and development (see also paragraph 41), that they adopt appropriate child-centred care practices, curricula and pedagogies, and that they have access to specialist professional resources and support, including supervision and monitoring systems for public and private programmes, institutions and services.

24. **Access to services, especially for the most vulnerable.** The Committee calls on States parties to ensure that all young children (and those with primary responsibility for their well-being) are guaranteed access to appropriate and effective services, including programmes of health, care and education specifically designed to promote their well-being. Particular attention should be paid to the most vulnerable groups of young children and to those who are at risk of discrimination (art. 2). This includes girls, children living in poverty, children with disabilities, children belonging to indigenous or minority groups, children from migrant families, children who are orphaned or lack parental care for other reasons, children living in institutions, children living with mothers in prison, refugee and asylum-seeking children, children infected with or affected by HIV/AIDS, and children of alcohol- or drug-addicted parents (see also section VII).

25. **Birth registration.** Comprehensive services for early childhood begin at birth. The Committee notes that provision for registration of all children at birth is still a major challenge for many countries and regions. This can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare. As a first step in ensuring the rights to survival, development and access to quality services for all children (art. 6), the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate. The Committee notes that children who are sick or disabled are less likely to be registered in some regions and emphasizes that all children should be registered at birth, without discrimination of any kind (art. 2). The Committee also reminds States parties of the importance of facilitating late registration of birth, and ensuring that children who have not been registered have equal access to health care, protection, education and other social services.

26. **Standard of living and social security.** Young children are entitled to a standard of living adequate for their physical, mental, spiritual, moral and social development (art. 27). The Committee notes with concern that even the most basic standard of living is not assured for millions of young children, despite widespread recognition of the adverse consequences of deprivation. Growing up in relative poverty undermines children's well-being, social inclusion and self-esteem and reduces opportunities for learning and development. Growing up in conditions of absolute poverty has even more serious consequences, threatening children's survival and their health, as well as undermining the basic quality of life. States parties are urged to implement systematic strategies to reduce poverty in early childhood as well as combat its negative effects on children's well-being. All possible means should be employed, including "material assistance and support programmes" for children and families (art. 27, para. 3), in order to assure to young children a basic standard of living consistent with rights. Implementing children's right to benefit from social security, including social insurance, is an important element of any strategy (art. 26).

27. **Health-care provision.** States parties should ensure that all children have access to the highest attainable standard of health care and nutrition during their early years, in order to reduce infant mortality and enable children to enjoy a healthy start in life (art. 24). In particular:

(a) States parties have a responsibility to ensure access to clean drinking water, adequate sanitation, appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment. Malnutrition and disease have long-term impacts on children's physical health and development. They affect children's mental state, inhibiting learning and social participation and reducing prospects for realizing their potential. The same applies to obesity and unhealthy lifestyles;

(b) States parties have a responsibility to implement children's right to health by encouraging education in child health and development, including about the advantages of breastfeeding, nutrition, hygiene and sanitation.[2] Priority should also be given to the provision of appropriate prenatal and post-natal health care for mothers and infants in order to foster

healthy family-child relationships, especially between a child and his or her mother (or other primary caregiver) (art. 24, para. 2). Young children are themselves able to contribute to ensuring their personal health and encouraging healthy lifestyles among their peers, for example through participation in appropriate, child-centred health education programmes;

(c) The Committee wishes to draw States parties' attention to the particular challenges of HIV/AIDS for early childhood. All necessary steps should be taken to: (i) prevent infection of parents and young children, especially by intervening in chains of transmission, especially between father and mother and from mother to baby; (ii) provide accurate diagnoses, effective treatment and other forms of support for both parents and young children who are infected by the virus (including antiretroviral therapies); and (iii) ensure adequate alternative care for children who have lost parents or other primary caregivers due to HIV/AIDS, including healthy and infected orphans. (See also general comment No. 3 (2003) on HIV/AIDS and the rights of the child.)

28. **Early childhood education.** The Convention recognizes the right of the child to education, and primary education should be made compulsory and available free to all (art. 28). The Committee recognizes with appreciation that some States parties are planning to make one year of preschool education available and free of cost for all children. The Committee interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development (art. 6, para. 2). Linking education to development is elaborated in article 29, paragraph 1: "States parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential." General comment No. 1 on the aims of education explains that the goal is to "empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence" and that this must be achieved in ways that are child-centred, child-friendly and reflect the rights and inherent dignity of the child (para. 2). States parties are reminded that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (art. 2).

29. **Parental and public responsibilities for early childhood education.** The principle that parents (and other primary caregivers) are children's first educators is well established and endorsed within the Convention's emphasis on respect for the responsibilities of parents (sect. IV above). They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding (art. 5). The Committee invites States parties to make this principle a starting point for planning early education, in two respects:

(a) In providing appropriate assistance to parents in the performance of their child-rearing responsibilities (art. 18, para. 2), States parties should take all appropriate measures to enhance parents' understanding of their role in their children's early education, encourage child-rearing practices which are child-centred, encourage respect for the child's dignity and provide opportunities for developing understanding, self-esteem and self-confidence;

(b) In planning for early childhood, States parties should at all times aim to provide programmes that complement the parents' role and are developed as far as possible in partnership with parents, including through active cooperation between parents, professionals and others in developing "the child's personality, talents and mental and physical abilities to their fullest potential" (art. 29, para. 1 (a)).

30. The Committee calls on States parties to ensure that all young children receive education in the broadest sense (as outlined in paragraph 28 above), which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions. Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between "care" and "education" services have not always been in children's best interests, the concept of "Educare" is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood.

31. **Community-based programmes.** The Committee recommends that States parties support early childhood development programmes, including home- and community-based preschool programmes, in which the empowerment and education of parents (and other caregivers) are main features. States parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school. They are encouraged to construct high-quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather by imposing a standardized approach to early childhood care and education. The Committee also recommends that States parties pay greater attention to, and actively support, a rights-based approach to early childhood programmes, including initiatives surrounding transition to primary school that ensure continuity and progression, in order to build children's confidence, communication skills and enthusiasm for learning through their active involvement in, among others, planning activities.

32. **The private sector as service provider.** With reference to its recommendations adopted during its 2002 day of general discussion on "The private sector as service provider and its role in implementing child rights" (see CRC/C/121, paras. 630-653), the Committee recommends that States parties support the activities of the non-governmental sector as a channel for programme implementation. It further calls on all non-State service providers ("for profit" as well as "non-profit" providers) to respect the principles and provisions of the Convention and, in this regard, reminds States parties of their primary obligation to ensure its implementation. Early childhood professionals – in both the State and non-State sectors – should be provided with thorough preparation, ongoing training and adequate remuneration. In this context, States parties are responsible for service provision for early childhood development. The role of civil society should be complementary to – not a substitute for – the role of the State. Where non-State services play a major role, the Committee reminds States parties that they have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served.

33. **Human rights education in early childhood.** In the light of article 29 and the Committee's general comment No. 1 (2001), the Committee also recommends that States parties include human rights education within early childhood education. Such education should be participatory and empowering to children, providing them with practical opportunities to exercise their rights and responsibilities in ways adapted to their interests, concerns and evolving capacities. Human rights education of young children should be anchored in everyday issues at home, in childcare centres, in early education programmes and other community settings with which young children can identify.

34. **Right to rest, leisure and play.** The Committee notes that insufficient attention has been given by States parties and others to the implementation of the provisions of article 31 of the Convention, which guarantees "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts". Play is one of the most distinctive features of early childhood. Through play, children both enjoy and challenge their current capacities, whether they are playing alone or with others. The value of creative play and exploratory learning is widely recognized in early childhood education. Yet realizing the right to rest, leisure and play is often hindered by a shortage of opportunities for young children to meet, play and interact in child-centred, secure, supportive, stimulating and stress-free environments. Children's right-to-play space is especially at risk in many urban environments, where the design and density of housing, commercial centres and transport systems combine with noise, pollution and all manner of dangers to create a hazardous environment for young children. Children's right to play can also be frustrated by excessive domestic chores (especially affecting girls) or by competitive schooling. Accordingly, the Committee appeals to States parties, NGOs and private actors to identify and remove potential obstacles to the enjoyment of these rights by the youngest children, including as part of poverty reduction strategies. Planning for towns, and leisure and play facilities should take account of children's right to express their views (art. 12), through appropriate consultations. In all these respects, States parties are encouraged to pay greater attention and allocate adequate resources (human and financial) to the implementation of the right to rest, leisure and play.

35. **Modern communications technologies and early childhood.** Article 17 recognizes the potential for both traditional print-based media and modern information technology-based mass media to contribute positively to the realization of children's rights. Early childhood is a specialist market for publishers and media producers, who should be encouraged to disseminate material that is appropriate to the capacities and interests of young children, socially and educationally beneficial to their well-being, and which reflects the national and regional diversities of children's circumstances, culture and language. Particular attention should be given to the need of minority groups for access to media that promote their recognition and social inclusion. Article 17, paragraph (e), also refers to the role of States parties in ensuring that children are protected from inappropriate and potentially harmful material. Rapid increases in the variety and accessibility of modern technologies, including Internet-based media, are a particular cause for concern. Young children are especially at risk if they are exposed to inappropriate or offensive material. States parties are urged to regulate media production and delivery in ways that protect young children, as well as support parents/caregivers to fulfil their child-rearing responsibilities in this regard (art. 18).

VI. YOUNG CHILDREN IN NEED OF SPECIAL PROTECTION

36. **Young children's vulnerability to risks.** Throughout this general comment the Committee notes that large numbers of young children grow up in difficult circumstances that are frequently in violation of their rights. Young children are especially vulnerable to the harm caused by unreliable, inconsistent relationships with parents and caregivers, or growing up in extreme poverty and deprivation, or being surrounded by conflict and violence or displaced from their homes as refugees, or any number of other adversities prejudicial to their well-being. Young children are less able to comprehend these adversities or resist harmful effects on their health, or physical, mental, spiritual, moral or social development. They are especially at risk where parents or other caregivers are unable to offer adequate protection, whether due to illness or death, or due to disruption to families or communities. Whatever the difficult circumstances, young children require particular consideration because of the rapid developmental changes they are experiencing; they are more vulnerable to disease, trauma, and distorted or disturbed development, and they are relatively powerless to avoid or resist difficulties and are dependent on others to offer protection and promote their best interests. In the following paragraphs, the Committee draws States parties' attention to major difficult circumstances referred to in the Convention that have clear implications for rights in early childhood. This list is not exhaustive, and children may in any case be subject to multiple risks. In general, the goal of States parties should be to ensure that every child, in every circumstance, receives adequate protection in fulfilment of his or her rights.

(a) *Abuse and neglect (art. 19).* Young children are frequent victims of neglect, maltreatment and abuse, including physical and mental violence. Abuse very often happens within families, which can be especially destructive. Young children are least able to avoid or resist, least able to comprehend what is happening and least able to seek the protection of others. There is compelling evidence that trauma as a result of neglect and abuse has negative impacts on development, including, for the very youngest children, measurable effects on processes of brain maturation. Bearing in mind the prevalence of abuse and neglect in early childhood and the evidence that it has long-term repercussions, States parties should take all necessary measures to safeguard young children at risk and offer protection to victims of abuse, taking positive steps to support their recovery from trauma while avoiding stigmatization for the violations they have suffered;

(b) *Children without families (art. 20 and 21).* Children's rights to development are at serious risk when they are orphaned, abandoned or deprived of family care or when they suffer long-term disruptions to relationships or separations (e.g. due to natural disasters or other emergencies, epidemics such as HIV/AIDS, parental imprisonment, armed conflicts, wars and forced migration). These adversities will impact on children differently depending on their personal resilience, their age and their circumstances, as well as the availability of wider sources of support and alternative care. Research suggests that low-quality institutional care is unlikely to promote healthy physical and psychological development and can have serious negative consequences for long-term social adjustment, especially for children under 3 but also for children under 5 years old. To the extent that alternative care is required, early placement in family-based or family-like care is more likely to produce positive outcomes for young children. States parties are encouraged to invest in and support forms of alternative care that can ensure security, continuity of care and affection, and the opportunity for young children to form long-term attachments based on mutual trust and respect, for example through fostering, adoption and support for members of extended families. Where adoption is envisaged "the

best interests of the child shall be the paramount consideration" (art. 21), not just "a primary consideration" (art. 3). States parties are encouraged to systematically bear in mind and respect all relevant rights of the child and obligations of States parties set out elsewhere in the Convention and recalled in the present general comment;

(c) *Refugees (art. 22).* Young children who are refugees are most likely to be disoriented, having lost much that is familiar in their everyday surroundings and relationships. They and their parents are entitled to equal access to health care, education and other services. Children who are unaccompanied or separated from their families are especially at risk. The Committee offers detailed guidance on the care and protection of these children in general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;

(d) *Children with disabilities (art. 23).* Early childhood is the period during which disabilities are usually identified and the impact on children's well-being and development recognized. Young children should never be institutionalized solely on the grounds of disability. It is a priority to ensure that they have equal opportunities to participate fully in education and community life, including by the removal of barriers that impede the realization of their rights. Young disabled children are entitled to appropriate specialist assistance, including support for their parents (or other caregivers). Disabled children should at all times be treated with dignity and in ways that encourage their self-reliance. (See also the recommendations from the Committee's 1997 day of general discussion on "The rights of children with disabilities" contained in document CRC/C/66.);

(e) *Harmful work (art. 32).* In some countries and regions, children are socialized to work from an early age, including in activities that are potentially hazardous, exploitative and damaging to their health, education and long-term prospects. For example, young children may be initiated into domestic work or agricultural labour, or assist parents or siblings engaged in hazardous activities. Even very young babies may be vulnerable to economic exploitation, as when they are used or hired out for begging. Exploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern. States parties have particular responsibilities in relation to extreme forms of hazardous child labour identified in the Worst Forms of Child Labour Convention, 1999 (No. 182) of the ILO;

(f) *Substance abuse (art. 33).* While very young children are only rarely likely to be substance abusers, they may require specialist health care if born to alcohol- or drug-addicted mothers, and protection where family members are abusers and they are at risk of exposure to drugs. They may also suffer adverse consequences of alcohol or drug abuse on family living standards and quality of care, as well as being at risk of early initiation into substance abuse;

(g) *Sexual abuse and exploitation (art. 34).* Young children, especially girls, are vulnerable to early sexual abuse and exploitation within and outside families. Young children in difficult circumstances are at particular risk, for example, girl children employed as domestic workers. Young children may also be victims of producers of pornography; this is covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2002;

(h) *Sale, trafficking and abduction of children (art. 35).* The Committee has frequently expressed concern about evidence of the sale and trafficking of abandoned and separated children for various purposes. As far as the youngest age groups are concerned, these purposes can include adoption, particularly (though not solely) by foreigners. In addition to the Optional Protocol on the sale of children, child prostitution and child pornography, the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption provides a framework and mechanism for preventing abuses in this sphere, and the Committee has therefore always consistently and strongly urged all States parties that recognize and/or permit adoption to ratify or accede to this treaty. Universal birth registration, in addition to international cooperation, can help to combat this violation of rights;

(i) *Deviant behaviour and lawbreaking (art. 40).* Under no circumstances should young children (defined as under 8 years old; see paragraph 4) be included in legal definitions of minimum age of criminal responsibility. Young children who misbehave or violate laws require sympathetic help and understanding, with the goal of increasing their capacities for personal control, social empathy and conflict resolution. States parties should ensure that parents/caregivers are provided adequate support and training to fulfil their responsibilities (art. 18) and that young children have access to quality early childhood education and care, and (where appropriate) specialist guidance/therapies.

37. In each of these circumstances, and in the case of all other forms of exploitation (art. 36), the Committee urges States parties to incorporate the particular situation of young children into all legislation, policies and interventions to promote physical and psychological recovery and social reintegration within an environment that promotes dignity and self-respect (art. 39).

VII. CAPACITY-BUILDING FOR EARLY CHILDHOOD

38. **Resource allocation for early childhood.** In order to ensure that young children's rights are fully realized during this crucial phase of their lives (and bearing in mind the impact of early childhood experiences on their long-term prospects), States parties are urged to adopt comprehensive, strategic and time-bound plans for early childhood within a rights-based framework. This requires an increase in human and financial resource allocations for early childhood services and programmes (art. 4). The Committee acknowledges that States parties implementing child rights in early childhood do so from very different starting points, in terms of existing infrastructures for early childhood policies, services and professional training, as well as levels of resources potentially available to allocate to early childhood. The Committee also acknowledges that States parties may be faced with competing priorities to implement rights throughout childhood, for example where universal health services and primary education have still not been achieved. It is nonetheless important that there be sufficient public investment in services, infrastructure and overall resources specifically allocated to early childhood, for the many reasons set out in this general comment. In this connection, States parties are encouraged to develop strong and equitable partnerships between the Government, public services, non-governmental organizations, the private sector and families to finance comprehensive services in support of young children's rights. Finally, the Committee emphasizes that where services are decentralized, this should not be to the disadvantage of young children.

39. **Data collection and management.** The Committee reiterates the importance of comprehensive and up-to-date quantitative and qualitative data on all aspects of early childhood for the formulation, monitoring and evaluation of progress achieved, and for assessment of the

impact of policies. The Committee is aware that many States parties lack adequate national data collection systems on early childhood for many areas covered by the Convention, and in particular that specific and disaggregated information on children in the early years is not readily available. The Committee urges all States parties to develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, family structure, urban and rural residence, and other relevant categories. This system should cover all children up to the age of 18 years, with specific emphasis on early childhood, particularly children belonging to vulnerable groups.

40. **Capacity-building for research in early childhood.** The Committee noted earlier in this general comment that extensive research has been carried out on aspects of children's health, growth, and cognitive, social and cultural development, on the influence of both positive and negative factors on their well-being, and on the potential impact of early childhood care and education programmes. Increasingly, research is also being carried out on early childhood from a human rights perspective, notably on ways that children's participatory rights can be respected, including through their participation in the research process. Theory and evidence from early childhood research has a great deal to offer in the development of policies and practices, as well as in the monitoring and evaluation of initiatives and the education and training of all responsible for the well-being of young children. But the Committee also draws attention to the limitations of current research, through its focus mainly on early childhood in a limited range of contexts and regions of the world. As part of planning for early childhood, the Committee encourages States parties to develop national and local capacities for early childhood research, especially from a rights-based perspective.

41. **Training for rights in early childhood.** Knowledge and expertise about early childhood are not static but change over time. This is due variously to social trends impacting on the lives of young children, their parents and other caregivers, changing policies and priorities for their care and education, innovations in childcare, curricula and pedagogy, as well as the emergence of new research. Implementing child rights in early childhood sets challenges for all those responsible for children, as well as for children themselves as they gain an understanding of their role in their families, schools and communities. States parties are encouraged to undertake systematic child rights training for children and their parents, as well as for all professionals working for and with children, in particular parliamentarians, judges, magistrates, lawyers, law-enforcement officials, civil servants, personnel in institutions and places of detention for children, teachers, health personnel, social workers and local leaders. Furthermore, the Committee urges States parties to conduct awareness-raising campaigns for the public at large.

42. **International assistance.** Acknowledging the resource constraints affecting many States parties seeking to implement the comprehensive provisions outlined in this general comment, the Committee recommends that donor institutions, including the World Bank, other United Nations bodies and bilateral donors support early childhood development programmes financially and technically, and that it be one of their main targets in assisting sustainable development in countries receiving international assistance. Effective international cooperation can also strengthen capacity-building for early childhood, in terms of policy development, programme development, research and professional training.

43. **Looking forward.** The Committee urges all States parties, inter-governmental organizations, non-governmental organizations, academics, professional groups and grass-roots communities to continue advocating for the establishment of independent institutions on children's rights and foster continuous, high-level policy dialogues and research on the crucial importance of quality in early childhood, including dialogues at international, national, regional and local levels.

Notes

[1] See G. Lansdown, *The Evolving Capacities of the Child* (Florence, UNICEF Innocenti Research Centre, 2005).

[2] See Global Strategy for Infant and Young Child Feeding, World Health Organization, 2003.

Annex IV

COMMENT OF THE GOVERNMENT OF CHINA ON THE CONCLUDING OBSERVATIONS BY THE COMMITTEE ON THE RIGHTS OF THE CHILD (CRC/C/CHN/CO/2)

The Government of China deeply regrets the observation made by the Committee on the Rights of the Child on the consideration of the report of China that "it is concerned at reports that children of families practising their religion, notably the Falun Gong, are subject to harassment, threats and other negative actions including re-education through labour" (para. 44).

As clearly stated by the delegation of China during the dialogue with the Committee, the Government of China fully respects and protects citizens' freedom of religion in accordance with law. The allegations that the Chinese Government oppresses the people for exercising religious freedom are malicious defamation. Falun Gong is neither a religion nor a spiritual movement; rather, it is an evil cult against humanity, science and society. Under the influence of the heresies of Falun Gong, a large number of fanatic followers, including many children, have maimed themselves or even committed suicide. For the vast majority of practitioners, the Chinese Government has provided warm assistance and patient persuasion while fully respecting their legitimate rights with a view to helping them return to normal life. Only a few who have violated laws are punished. The Government's policy and approach have won support from the vast majority of the people, including the families of the victims of Falun Gong.

The Government of China wishes to reiterate that it has all along made earnest efforts to fulfil its obligations under the Convention and respects the mandate of the Committee provided by the Convention. The Chinese Government stands for constructive cooperation with the Committee with a view to better implementing the Convention, and expects the Committee to strictly observe its objective and impartial position and to adopt a prudent approach towards the information it has received. In particular, the Committee should not cite unverified "reports" against the State party in its concluding observations, as it may be taken advantage of by the groups and individuals with malicious agendas seeking to undermine the purposes and objectives of the Convention.